

8-13-2013

Cummings v. Stephens Clerk's Record v. 6 Dckt. 40793

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Cummings v. Stephens Clerk's Record v. 6 Dckt. 40793" (2013). *Idaho Supreme Court Records & Briefs*. 4593.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4593

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol 6 of 13

IN THE SUPREME COURT

OF THE STATE OF IDAHO

Supreme Court Docket No.

40793-2013

STEVEN CUMMINGS

Plaintiff/Appellant/ Cross Resp

vs.

LAW CLERK

ROGER L. STEPHENS, et al

Defendant/Respondent/Cross-

DAVID C. NYE District Judge

Appealed from the District Court of the SIXTH

Judicial District of the State of Idaho, in and for

BEAR LAKE County.

Nathan M. Olsen,

Attorney for Plaintiff/Appellant/Cross-Respondent

Brad Bearnson,

Attorney for Defendant/Respondent/Cross-Appellant



TABLE OF CONTENTS

<u>VOL.</u>	<u>PAGE NO.</u>	<u>DOCUMENT</u>
Vol.1	1 - 8	Complaint filed July 29, 2009
Vol.1	9 - 20	Answer and Third Party Complaint filed March 18, 2010
Vol.1	21 - 22	Motion for Summary Judgment filed Aug 6, 2010
Vol.1	23 - 28	Memorandum in Support of Motion for Summary Judgment filed Aug 6, 2010
Vol.1	29 - 38	Affidavit of Steven Cummings filed Aug 6, 2010
Vol.1	39 - 42	Joint Stipulation Re: Defendant Roger L. Stephens's Rule 56(f) Motion filed Aug 31, 2010
Vol.1	43 - 45	Defendant's Motion for Summary Judgment filed Sept 22, 2010
Vol.1	46 - 65	Defendant's Memorandum in Support of Motion for Summary Judgment filed Sept 22, 2010
Vol.1	66 - 73	Defendant's Response to Plaintiff's Motion for Summary Judgment filed Oct 13, 2010
Vol.1	74 - 89	Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment filed Oct 14, 2010
Vol.1	90 - 100	Defendant's Reply Memorandum in Support of Motion for Summary Judgment filed Oct 18, 2010
Vol.1	101- 105	Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment filed Oct 18, 2010
Vol.1	106- 132	Decision on Motion for Summary Judgment filed Jan 4, 2011
Vol.1	133- 135	Plaintiff's Motion to Reconsider filed Jan 18, 2011
Vol.1	136- 140	Motion for Order Awarding Attorney's Fees and Costs filed Jan 28, 2011

Vol.1	141- 143	Memorandum of Fees and Costs filed Jan 28, 2011
Vol.1	144- 156	Affidavit of Randall C. Budge in Support of Fees and Costs filed Jan 28, 2011
Vol.1	157- 165	Affidavit of Brad H. Bearnson in Support of Fees and Costs filed Jan 28, 2011
Vol.1	166- 187	Plaintiff's Memorandum in Support of its Motion to Reconsider filed Feb 2, 2011
Vol.2	188- 410	Affidavit of Counsel in Support of Plaintiff's Motion to Reconsider filed Feb 2, 2011
Vol.3	411- 413	Motion to Strike Affidavit of Counsel filed March 3, 2011
Vol.3	414- 422	Memorandum in Support of Motion to Strike Affidavit of Counsel filed March 3, 2011
Vol.3	423- 440	Defendant's Response to Plaintiff's Motion to Reconsider, filed March 9, 2011
Vol.3	441- 444	Defendant's Reply Memorandum in Support of Motion to Strike Affidavit of Counsel, and Motion to Strike Affidavit of Nathan M. Olsen filed March 15, 2011
Vol.3	445- 520	First Amended Complaint filed Sept 13, 2011
Vol.3	521- 546	Defendant Northern Title's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011
Vol.3	547- 573	Defendant Roger L. Stephen's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011
Vol.4	574- 649	Second Amended Complaint filed Oct 24, 2011
Vol.4	650- 675	Stephens' Answer to Cummings' Second Amended Complaint & Stephens' Third Party Complaint filed Nov 2, 2011
Vol.4	676- 677	Defendant's Answer to Plaintiff's Complaint filed Nov 8, 2011

Vol.4	678- 704	Defendant Northern Title's Answer to Plaintiff's Second Amended Complaint & Third Party Complaint filed Nov 14, 2011
Vol.4	705- 712	Answer and Demand for Jury Trial filed Nov 30, 2011
Vol.4	713- 720	Plaintiff's Supplemental Disclosure of Witnesses filed March 13, 2012
Vol.4	721- 727	Northern Title Company of Idaho, Inc.'s Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure filed March 15, 2012
Vol.4	728- 737	Memorandum Decision on Third Party Defendants' Motion for Summary Judgment Against Northern Title filed May 1, 2012
Vol.4	738- 740	Notice of Taking Deposition of Gregory Kelley filed May 11, 2012
Vol.4	741- 743	Amended Notice of Taking Deposition of Gregory Kelley filed May 11, 2012
Vol.4	744- 746	Defendant Northern Title's Second Motion in Limine with Request to file Over-Length Memorandum filed June 25, 2012
Vol.5	747-1059	Defendant Northern Title's Memorandum in Support of Second Motion in Limine filed June 25, 2012
Vol.6	1060-1062	Defendant Northern Title's Motion in Limine to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012
Vol.6	1063-1190	Defendant Northern Title's Memorandum in Support to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012
Vol.6	1191-1193	Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012
Vol.6	1194-1202	Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion for Leave to Amend Complaint to allege Punitive Damages filed July 3, 2012

Vol.6	1203-1211	Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012
Vol.6	1212-1214	Notice of Hearing filed July 3, 2012
Vol.6	1215-1232	Stephens' Amended Answer to Cummings' Second Amended Complaint filed July 5, 2012
Vol.6	1233-1237	Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Experts filed July 6, 2012
Vol.7	1238-1327	Defendant Northern Title's Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint filed July 12, 2012
Vol.7	1328-1335	Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012
Vol.7	1336-1339	Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012
Vol.7	1340-1345	Reply Brief Supporting Motion for Leave to Amend the Complaint to Allege Punitive Damages filed July 16, 2012
Vol.7	1346-1377	Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley & Request to File Over-Length Reply Brief filed July 16, 2012
Vol.7	1378-1447	Reply for Northern Title's Second Motion in Limine & Request to file Over-Length Reply Brief filed July 16, 2012
Vol.8	1448-1451	Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley filed July 24, 2012
Vol.8	1452-1454	Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Witness Greg Kelley filed July 24, 2012

Vol.8	1455-1459	Defendant Northern Title's Objection and Memorandum in Opposition to Plaintiff's Motion to Reconsider filed July 30, 2012
Vol.8	1460-1462	Defendant Stephens' Motion for Order Awarding Attorney Fees and Costs filed Aug 29, 2012
Vol.8	1463-1470	Defendant Stephens' Brief in Support of Motion for Attorneys' Fees and Costs filed Aug 29, 2012
Vol.8	1471-1474	Memorandum of Fees and Costs filed Aug 29, 2012
Vol.8	1475-1503	Affidavit of Randall C. Budge in Support of Motion for Fees and Costs filed Aug 29, 2012
Vol.8	1504-1506	Plaintiff's Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Sept 11, 2012
Vol.8	1507-1532	Plaintiff's Post Trial Brief filed Oct 3, 2012
Vol.8	1533-1544	Plaintiff's Memorandum in Support of Motion Objecting to And Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Oct 10, 2012
Vol.8	1545-1570	Defendant Northern Title Company of Idaho, Inc.'s Amended Post-Trial Brief filed Nov 8, 2012
Vol.8	1571-1585	Plaintiff's Reply to Defendant Northern Title's Post Trial Brief filed Nov 19, 2012
Vol.8	1586-1587	Final Judgment filed Jan 22, 2013
Vol.8	1588-1635	Memorandum Decision, Findings of Fact and Conclusions of Law filed Jan 22, 2013
Vol.8	1636-1645	Memorandum of Authority in Support of Plaintiff's Memorandum of Fees and Costs Against Defendant Northern Title filed Feb 5, 2013
Vol.8	1646-1666	Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen filed Feb 5, 2013
Vol.9	1667-1668	Northern Title Company of Idaho, Inc.'s Motion for Attorney Fees and Costs filed Feb 5, 2013

Vol.9	1669-1670	Defendant Stephens' Renewed Motion for Order Awarding Attorneys' Fees and Costs filed Feb 5, 2013
Vol.9	1671-1679	Northern Title Company of Idaho, Inc.'s Brief in Support of Motion for Attorney Fees and Costs filed Feb 5, 2013
Vol.9	1680-1685	Memorandum of Fees and Costs filed Feb 5, 2013
Vol.9	1686-1713	Second Affidavit of Brad H. Bearnson in Support of Motion for Fees and Costs filed Feb 5, 2013
Vol.9	1714-1716	Plaintiff's Motion Objecting to and Disallowing Defendant Northern Title's Attorneys Fees and Costs filed Feb 12, 2013
Vol.9	1717-1730	Plaintiff's Brief: In Response to Defendant Northern Title's Objection and Motion to Quash Plaintiff's Request for Costs and Attorneys' Fees; and in Support of Plaintiff's Motion Objecting to and Disallowing of Defendant Northern Title's Attorneys' Fees and Costs filed Feb 20, 2013
Vol.9	1731-1741	Plaintiff's Amended Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens Attorneys' Fees and Costs filed Feb 20, 2013
Vol.9	1742-1751	Northern Title's Reply in Support of its Motion for Attorney Fees and Costs, and Response in Opposition to Plaintiff's Motion Objecting to Northern Title's Costs and Attorney Fees filed Feb 22, 2013
Vol.9	1752-1772	Notice of Appeal filed March 5, 2013
Vol.9	1773-1778	Decision on Motion to Intervene filed March 19, 2013
Vol.9	1779-1801	Northern Title Company of Idaho, Inc's Notice of Cross Appeal filed March 26, 2013
Vol.9	1802-1815	Decision on Costs and Fees filed April 4, 2013
Vol.9	1816-1817	Final Judgment on Costs and Fees filed April 12, 2013

Vol.9	1818-1840	Northern Title Company of Idaho, Inc's Amended Notice Of Cross Appeal filed April 25, 2013
Vol.9	1841-1863	Notice of Amended Appeal filed May 14, 2013
Vol.9	1864-1866	Certificate of Exhibits
Vol.9	1867	Certificate of Clerk
Vol.9	1868	Certificate of Service
Vol.9	1869-1870	Notice of Lodging

INDEX

<u>VOL.</u>	<u>PAGE NO.</u>	<u>DOCUMENT</u>
Vol.1	29 - 38	Affidavit of Steven Cummings filed Aug 6, 2010
Vol.1	144- 156	Affidavit of Randall C. Budge in Support of Fees and Costs filed Jan 28, 2011
Vol.1	157- 165	Affidavit of Brad H. Bearnson in Support of Fees and Costs filed Jan 28, 2011
Vol.2	188- 410	Affidavit of Counsel in Support of Plaintiff's Motion to Reconsider filed Feb 2, 2011
Vol.6	1194-1202	Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion for Leave to Amend Complaint to allege Punitive Damages filed July 3, 2012
Vol.7	1336-1339	Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012
Vol.8	1452-1454	Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Witness Greg Kelley filed July 24, 2012
Vol.8	1475-1503	Affidavit of Randall C. Budge in Support of Motion for Fees and Costs filed Aug 29, 2012
Vol.4	741- 743	Amended Notice of Taking Deposition of Gregory Kelley filed May 11, 2012
Vol.1	9 - 20	Answer and Third Party Complaint filed March 18, 2010
Vol.4	705- 712	Answer and Demand for Jury Trial filed Nov 30, 2011
Vol.9	1867	Certificate of Clerk
Vol.9	1864-1866	Certificate of Exhibits
Vol.9	1868	Certificate of Service
Vol.1	1 - 8	Complaint filed July 29, 2009

Vol.1	106-132	Decision on Motion for Summary Judgment filed Jan 4, 2011
Vol.9	1773-1778	Decision on Motion to Intervene filed March 19, 2013
Vol.9	1802-1815	Decision on Costs and Fees filed April 4, 2013
Vol.4	676-677	Defendant's Answer to Plaintiff's Complaint filed Nov 8, 2011
Vol.1	43 - 45	Defendant's Motion for Summary Judgment filed Sept 22, 2010
Vol.1	46 - 65	Defendant's Memorandum in Support of Motion for Summary Judgment filed Sept 22, 2010
Vol.8	1545-1570	Defendant Northern Title Company of Idaho, Inc.'s Amended Post-Trial Brief filed Nov 8, 2012
Vol.3	521-546	Defendant Northern Title's Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011
Vol.4	678-704	Defendant Northern Title's Answer to Plaintiff's Second Amended Complaint & Third Party Complaint filed Nov 14, 2011
Vol.5	747-1059	Defendant Northern Title's Memorandum in Support of Second Motion in Limine filed June 25, 2012
Vol.6	1063-1190	Defendant Northern Title's Memorandum in Support to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012
Vol.6	1060-1062	Defendant Northern Title's Motion in Limine to Exclude Lenore Katri & Gregory Kelley filed July 2, 2012
Vol.7	1238-1327	Defendant Northern Title's Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint filed July 12, 2012
Vol.8	1455-1459	Defendant Northern Title's Objection and Memorandum in Opposition to Plaintiff's Motion to Reconsider filed July 30, 2012

Vol.4	744 - 746	Defendant Northern Title's Second Motion in Limine with Request to file Over-Length Memorandum filed June 25, 2012
Vol.1	90 - 100	Defendant's Reply Memorandum in Support of Motion for Summary Judgment filed Oct 18, 2010
Vol.3	441- 444	Defendant's Reply Memorandum in Support of Motion to Strike Affidavit of Counsel and Motion to Strike Affidavit of Nathan M. Olsen filed March 15, 2011
Vol.1	66 - 73	Defendant's Response to Plaintiff's Motion for Summary Judgment filed Oct 13, 2010
Vol.3	423 - 440	Defendant's Response to Plaintiff's Motion to Reconsider filed March 9, 2011
Vol.3	547 - 573	Defendant Roger L. Stephens' Answer to Plaintiff's First Amended Complaint & Third Party Complaint filed Oct 6, 2011
Vol.8	1463-1470	Defendant Stephens' Brief in Support of Motion for Attorneys' Fees and Costs filed Aug 29, 2012
Vol.8	1460-1462	Defendant Stephens' Motion for Order Awarding Attorney Fees and Costs filed Aug 29, 2012
Vol.9	1669-1670	Defendant Stephens' Renewed Motion for Order Awarding Attorneys' Fees and Costs filed Feb 5, 2013
Vol.8	1586-1587	Final Judgment filed Jan 22, 2013
Vol.9	1816-1817	Final Judgment on Costs and Fees filed April 12, 2013
Vol.3	445 - 520	First Amended Complaint filed Sept 13, 2011
Vol.1	39 - 42	Joint Stipulation Re: Defendant Roger L. Stephens's Rule 56(f) Motion filed Aug 31, 2010
Vol.4	728 - 737	Memorandum Decision on Third Party Defendants' Motion for Summary Judgment Against Northern Title filed May 1, 2012
Vol.7	1233-1237	Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Experts filed July 6, 2012

Vol.8	1588-1635	Memorandum Decision, Findings of Fact and Conclusions of Law filed Jan 22, 2013
Vol.7	1346-1377	Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley & Request to File Over-Length Reply Brief filed July 16, 2012
Vol.1	23 - 28	Memorandum in Support of Motion for Summary Judgment filed Aug 6, 2010
Vol.3	414 - 422	Memorandum in Support of Motion to Strike Affidavit of Counsel filed March 3, 2011
Vol.8	1636-1645	Memorandum of Authority in Support of Plaintiff's Memorandum of Fees and Costs Against Defendant Northern Title filed Feb 5, 2013
Vol.8	1646-1666	Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen filed Feb 5, 2013
Vol.1	141 - 143	Memorandum of Fees and Costs filed Jan 28, 2011
Vol.8	1471-1474	Memorandum of Fees and Costs filed Aug 29, 2012
Vol.9	1680-1685	Memorandum of Fees and Costs filed Feb 5, 2013
Vol.1	136 - 140	Motion for Order Awarding Attorney's Fees and Costs filed Jan 28, 2011
Vol.1	21 - 22	Motion for Summary Judgment filed Aug 6, 2010
Vol.3	411- 413	Motion to Strike Affidavit of Counsel filed March 3, 2011
Vol.9	1818-1840	Northern Title Company of Idaho, Inc.'s Amended Notice Of Cross Appeal filed April 25, 2013
Vol.4	721 - 727	Northern Title Company of Idaho, Inc.'s Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure filed March 15, 2012
Vol.9	1671-1679	Northern Title Company of Idaho, Inc.'s Brief in Support of Motion for Attorney Fees and Costs filed Feb 5, 2013

Vol.9	1667-1668	Northern Title Company of Idaho, Inc.'s Motion for Attorney Fees and Costs filed Feb 5, 2013
Vol.9	1779-1801	Northern Title Company of Idaho, Inc.'s Notice of Cross Appeal filed March 26, 2013
Vol.9	1742-1751	Northern Title's Reply in Support of its Motion for Attorney Fees and Costs, and Response in Opposition to Plaintiff's Motion Objecting to Northern Title's Costs and Attorney Fees filed Feb 22, 2013
Vol.9	1841-1863	Notice of Amended Appeal filed May 14, 2013
Vol.9	1752-1772	Notice of Appeal filed March 5, 2013
Vol.6	1212-1214	Notice of Hearing filed July 3, 2012
Vol.9	1869-1870	Notice of Lodging filed May 20, 2013
Vol.4	738 - 740	Notice of Taking Deposition of Gregory Kelley filed May 11, 2012
Vol.9	1731-1741	Plaintiff's Amended Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Feb 20, 2013
Vol.9	1717-1730	Plaintiff's Brief: In Response to Defendant Northern Title's Objection and Motion to Quash Plaintiff's Request for Costs and Attorneys' Fees; and in Support of Plaintiff's Motion Objecting to and Disallowing of Defendant Northern Title's Attorneys' Fees and Costs filed Feb 20, 2013
Vol.1	166 - 187	Plaintiff's Memorandum in Support of its Motion to Reconsider filed Feb 2, 2011
Vol.6	1203-1211	Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012
Vol.8	1533-1544	Plaintiff's Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Oct 10, 2012

Vol.6	1191-1193	Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages filed July 3, 2012
Vol.8	1504-1506	Plaintiff's Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs filed Sept 11, 2012
Vol.9	1714-1716	Plaintiff's Motion Objecting to and Disallowing Defendant Northern Title's Attorneys Fees and Costs filed Feb 12, 2013
Vol.1	133 - 135	Plaintiff's Motion to Reconsider filed Jan 18, 2011
Vol.8	1448-1451	Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley filed July 24, 2012
Vol.8	1507-1532	Plaintiff's Post Trial Brief filed Oct 3, 2012
Vol.1	101 - 105	Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment filed Oct 18, 2010
Vol.8	1571-1585	Plaintiff's Reply to Defendant Northern Title's Post Trial Brief filed Nov 19, 2012
Vol.1	74 - 89	Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment filed Oct 14, 2010
Vol.7	1328-1335	Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley filed July 12, 2012
Vol.4	713 - 720	Plaintiff's Supplemental Disclosure of Witnesses filed March 13, 2012
Vol.7	1340-1345	Reply Brief Supporting Motion for Leave to Amend the Complaint to Allege Punitive Damages filed July 16, 2012
Vol.7	1378-1447	Reply for Northern Title's Second Motion in Limine & Request to File Over-Length Reply Brief filed July 16, 2012
Vol.9	1686-1713	Second Affidavit of Brad H. Bearson in Support of Motion for Fees and Costs filed Feb 5, 2013
Vol.4	574 - 649	Second Amended Complaint filed Oct 24, 2011

Vol.6	1215-1232	Stephens' Amended Answer to Cummings' Second Amended Complaint filed July 5, 2012
Vol.4	650 - 675	Stephens' Answer to Cummings' Second Amended Complaint & Stephens' Third Party Complaint filed Nov 2, 2011

2012 JUL -2 AM 11:41

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

Defendants.)

Case No. CV-2009-183

**DEFENDANT NORTHERN TITLE'S
MOTION IN LIMINE TO EXCLUDE
LENORE KATRI & GREGORY
KELLEY**

ROGER L. STEPHENS, an individual,)
Third Party Plaintiff,)

vs.)


DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
SKINNER, an individual residing in)
Montpelier, Idaho, RYAN OLSEN, an)
individual residing in Georgetown,)
Idaho, EXIT REALTY OF BEAR)
LAKE, LLC an Idaho Limited Liability)
Company, JOHN DOES I-X.)

Third Party Defendants.)

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, and hereby makes this
Motion in Limine to Exclude Lenore Katri and Gregory Kelley. A Memorandum in Support has
been filed herewith.

DATED this 29th day of June, 2012.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

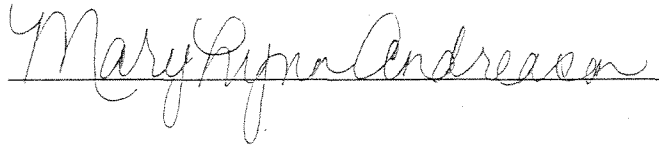
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June, 2012, I served a true and correct copy of the above and foregoing **DEFENDANT NORTHERN TITLE'S MOTION IN LIMINE TO EXCLUDE LENORE KATRI AND GREGORY KELLEY** to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)

Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391	jef@racinelaw.net

Phillip J. Collaer	[x] U. S. Mail/Postage Prepaid
Anderson Julian & Hull, LLP	[] Hand Delivery
250 S. 5 th Street, Ste. 700	[] Overnight Mail
PO Box 7426	[] Facsimile (208-344-5510)
Boise, Idaho 83707-7426	[x] Email (pcollaer@ajhlaw.com)



2012 JUL -2 AM 11:40

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Case No. CV-2009-183

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

**DEFENDANT NORTHERN TITLE'S
MEMORANDUM IN SUPPORT TO
EXCLUDE LENORE KATRI &
GREGORY KELLEY**

Defendants.)

ROGER L. STEPHENS, an individual,)

Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
SKINNER, an individual residing in)
Montpelier, Idaho, RYAN OLSEN, an)
individual residing in Georgetown,)
Idaho, EXIT REALTY OF BEAR)
LAKE, LLC an Idaho Limited Liability)
Company, JOHN DOES I-X.)

Third Party Defendants.)

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and hereby provides
this *Memorandum in Support of Defendant Northern Title's Motion in Limine to Exclude Lenore
Katri and Gregory Kelley*.

INTRODUCTION

Plaintiff intends to call as expert witnesses Lenore Katri and Gregory Kelley. Plaintiff
intends Lenore Katri to testify regarding the duties and obligations of Northern Title in both of its
capacities as escrow agent and title officer. Plaintiff intends Gregory Kelley to opine on the value
of the property at dispute.

Plaintiff failed to provide expert disclosures in accordance with this Court's *Order Setting
Jury Trial*. In the Order Setting Jury Trial, the Court ordered "Plaintiff shall disclose all fact and
expert witnesses no later than 140 days before trial . . . [and] Expert witnesses shall be disclosed in
the manner and with the specificity required by I.R.C.P. 26(b)(4)(A)(i)." Plaintiff did not abide
by this order, withheld information until the latest hour, and as such Plaintiff's experts should be
excluded.

Notwithstanding the above, Lenore Katri is not qualified under Rule 702. Through her
deposition, it was revealed that Lenore Katri has never worked as a title officer, has received little
to no training in regards to the duties of a title officer, and by her own admissions lacks the
requisite knowledge, skill, experience, training or education as a title officer expert.

I. PLAINTIFF FAILED TO MAKE EXPERT DISCLOSURES UNTIL THE DAY OF DEPOSITION, MONTHS AFTER THE COURT'S ESTABLISHED DEADLINE.

Among other things, expert disclosures include at least 1) a complete statement of all opinions to be expressed and the basis and reasons for those opinions; 2) any data or information considered by the expert in forming their opinion; and 3) any exhibits to be used in support of the opinions. I.R.C.P. 26(b)(4)(A)(i) (2012). Per the *Order Setting Jury Trial*, Plaintiff's expert disclosures were due no less than 140 days before trial. See *Order Setting Jury Trial* at ¶ 5, attached hereto as Exhibit "A." Where expert disclosures are untimely, the Court may exclude that expert witness. See *Noble v. Ada County Elections Bd.*, 135 Idaho 495, 499-500, 20 P.3d 679, 683-684 (Court was proper in exclusion of expert's testimony, rather than dismissing the case) (citing *Roe v. Doe*, 129 Idaho 663, 668, 931 P.2d 657, 662 (Ct.App.1996)); see also Ex. "A," *Order Setting Jury Trial* at ¶ 5 (unless justice requires, witnesses not disclosed in accordance with the Order will be excluded from trial).

Plaintiff's expert disclosures were due on March 13, 2012. See Ex. "A," *Order Setting Jury Trial* at ¶ 5. On March 13, 2012, Northern Title received Plaintiff's "expert disclosure." See *Pl's. Supp. Discl. Witnesses*, attached hereto as Exhibit "B." Therein, Plaintiff states that he intends to call Lenore Katri and Gregory Kelley as expert witnesses. *Id.* However, Plaintiff failed to state the opinions of each expert, what specific data each expert would be relying on or identify specific exhibits to be used by each expert. *Cf.* I.R.C.P. 26(b)(4)(A)(i).

With regard to Katri, Plaintiff's disclosure lists fourteen (14) issues on which Katri is expected to testify. See Ex. "B," *Pl's. Supp. Discl. Witnesses* at 2-4. However, Plaintiff disclosure only posed "issues" that Katri is expected to testify on, leaving out what Katri's actual

opinions were, what specific basis there was for such opinions or what specific documents Katri would rely on in forming her opinions. *Id.* At deposition, Katri herself testified that Plaintiff's disclosure (1) did not contain her actual opinions, (2) did not contain the basis or reasons for her opinions and did not specifically refer to documents she relied on in forming her opinions. See *Depo. Katri* at 36:1-45:25, 47:11-52:11, attached hereto as Exhibit "C."

Equally disturbing is when Plaintiff's disclosure was made, namely on March 13, 2012. Prior to her deposition on June 14, 2012, Katri had never seen Plaintiff's disclosures. In forming her opinions, Katri spoke little to anyone about the case, not even much to Plaintiff's counsel, relying chiefly on certain documents to form her opinions. See Ex. "C," *Depo. Katri* at 54:3-10, 55:21-24. According to Katri however, Plaintiff's counsel gave her these documents thirty to sixty (30-60) days before her deposition, and certainly not ninety (90) days before. See Ex. "C," *Depo Katri* at 139:14-140:6. In contrast, Plaintiff's "expert disclosures" were made more than ninety (90) days before Katri's deposition, on March 13, 2012. See Ex. "B," *Pl's. Supp. Discl. Witnesses*. Therefore, the record discloses that Plaintiff's disclosure was served before his expert could ever form an actual opinion. Buttredding this fact, Katri testified she had not even considered some of the issues listed in Plaintiff's disclosures. See Ex. "C," *Depo. Katri* at 48:7-19, 115:1-15.

Katri's deposition was taken by Northern Title on June 14, 2012. By this time, Plaintiff had not produced any documents or made further disclosures to elucidate Katri's opinions. Mid-way through her deposition, Katri revealed two large stacks of documents from under her chair:

KATRI: We haven't really discussed much of it. He gave me copies of documents.

BERGMAN: Okay. Do you have with you the copies of the documents that he gave you?

KATRI: Yes.

BERGMAN: And so are these the documents that you relied on in forming your opinion?

KATRI: Yes.

Ex. "C," *Depo. Katri* at 54:3-10.

Plaintiff's production of documents mid-way through Katri's deposition totaled seven hundred and sixteen (716) pages. This unfair practice was preserved on the record, where the documents produced by Plaintiff and relied on by Katri were entered as deposition Exhibits "3" and "4." See Ex. "C," *Depo. Katri* at 61.

Plaintiff's inadequate and late disclosure of Gregory Kelley was equally disturbing. In *Plaintiff's Supplemental Disclosures of Witnesses*, Plaintiff again falls radically short of the *Order Setting Jury Trial* and Rule 26(b)(4)(A)(i). Just as he did with Katri, Plaintiff merely lists out the "issues" Kelley is expected to testify on:

Mr. Kelley will testify as to the present and future value of the subject property, and its diminished value resulting from the exclusion of the east side. His analysis will include a valuation of the property as a whole, including the acreage on the east side, compared to its diminished value as a whole without the west side acreage. He will also testify as to the value of the excluded west side property by itself. His analysis may also include valuation of portions of the property that was part of the purchase and sale agreement that was conveyed to Mr. Cummings that in fact was owned by differed parties than the seller. Mr. Kelley's testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April. He will review pertinent materials, i.e. the various legal descriptions and any other relevant records to his analysis.

Ex. "B," *Pl's. Supp. Discl. Witnesses* at 4. Here again, Plaintiff does not reveal Kelley's actual opinions, the basis of those specific opinions or any specific documents relied upon by Kelley. *Cf.* I.R.C.P. 26(b)(4)(A)(i).

Also like Katri, Plaintiff's disclosures were likely served before Kelley ever formed his actual opinions. For instance, in his disclosure Plaintiff states twice that Kelley will opine on the "diminished value" resulting from the separated east and west properties. Ex. "B," *Pl's. Supp. Discl. Witnesses* at 4. In his report however, Kelley clearly indicates that while Plaintiff requested him to look into a "diminishment in value," no diminishment could be detected. *Depo. Kelley* 182:13-183:1, attached hereto as Exhibit "D."

Also like Katri, Plaintiff's disclosure of documents relied upon by Kelley was utterly late. Not until the late afternoon of June 13, 2012 did Plaintiff provide a draft of Kelley's appraisal report. See *Nathan Olsen Email* attached hereto as Exhibit "E." The draft mentioned exhibits but provided none and was unsigned. See *Draft Kelley Report*, attached hereto as Exhibit "F." The next day on arriving for Kelley's deposition, Northern Title received a new version of Kelley's report. See Ex. "D," *Kelley Depo.* at 34:6-22.

Northern Title has been prejudiced as a result of Plaintiff's failure to make expert disclosures. Under the *Order Setting Jury Trial*, Northern Title's expert disclosures were rebuttal in nature. Specifically, Plaintiff's disclosures were due 35 days before Defendant's expert report. See Ex. "A," *Order Setting Jury Trial* at ¶ 5. In his Complaint, Plaintiff paints with a broad brush the various duties and breaches alleged against Northern Title. Where Plaintiff's disclosure of

experts was patently inadequate, Northern Title was similarly precluded from developing its own expert opinions. Northern Title's objection was placed on the record:

BERGMAN: I want to point out the fact that we were not provided with Mr. Kelley's report until late yesterday, and even that was simply a draft report. In addition to that, we were given Mr. Kelley's full final report today, the morning of the deposition. Additionally, we had not been provided any documents for Katri's deposition, which was taken earlier today.

Ex. "D," *Depo. Kelley* at 124:6-14. By June 14, 2012, Plaintiff should have long sense provided its expert disclosures. However, those disclosures were not made.

Plaintiff failed to make expert disclosures in accordance with Rule 26(b)(4)(A)(i) and the *Order Setting Jury Trial*. However, Northern Title is also cognizant of its currently pending request to make its own late expert disclosures. Not surprisingly therefore, Plaintiff has pending his own motion in limine to exclude Northern Title's expert Craig Warren – on the same alleged grounds for which Plaintiff is also guilty. The rules are not a one-way street. To the extent Plaintiff seeks to exclude Northern Title's experts on the basis of untimely and/or late disclosures, the door swings both ways and Plaintiff's experts should also be excluded.

II. KATRI IS NOT QUALIFIED TO PROVIDE EXPERT TESTIMONY ON THE DUTIES AND OBLIGATIONS OF A TITLE OFFICER, WHERE SHE HAS RECEIVED LITTLE TO NO SPECIFIC TRAINING AND HAS NEVER WORKED IN A TITLE DEPARTMENT OR AS A TITLE OFFICER.

Idaho has not adopted the *Daubert* standard regarding the reliability and relevance of an expert witness. See *Weeks v. Eastern Idaho Health Services*, 143 Idaho 834, 838, 153 P.3d 1180, 1184 (Idaho 2007)*Id.* (citing *Swallow v. Emergency Med. of Idaho*, 138 Idaho 589, 595 n. 1, 67 P.3d 68, 74 (2003)). Rather, "the question under the evidence rule is simply whether the expert's knowledge will assist the trier of fact." *Id.* Even still, an expert opinion that is speculative,

conclusory or unsubstantiated by facts is “of no assistance to the jury . . . [and] is inadmissible as evidence.” *Id.* (citing *Bomley v. Garey*, 132 Idaho 8907, 811, 979 P.2d 1165, 1169 (1999)).

Before the reliability or relevance of an expert’s opinions is considered, Rule 702 requires the witness to be “qualified” as an expert. When the trier of fact requires assistance through scientific, technical or specialized knowledge, the witness must be “qualified as an expert by knowledge, skill, experience, training, or education.” I.R.E. 702 (2012). While academic training is not a prerequisite, “there must be a demonstration that the witness has acquired, through some type of training or experience, the necessary expertise and knowledge to render the proffered opinion.” *State v. Glass*, 146 Idaho 77, 82-83, 190 P.3d 896, 901-902 (Idaho App. 2008). Additionally, a witness “may be qualified to render opinions about some things within a particular professional field but not others.” *Id.* (citing *State v. Eytchison*, 136 Idaho 210, 213, 30 P.3d 888, 991 (Idaho App. 2001)).

While Lenore Katri may be qualified to opine on the duties and obligations of an escrow officer, she lacks the expertise necessary to opine on the duties and obligations of a title officer. Plaintiff plans to have over half of Katri’s testimony focus on the duties and obligations of a title officer. These include a duty to (1) complete the transaction according to the real estate purchase contract. See Ex. “B,” *Pl.’s. Supp. Discl. Witnesses* at 2, ¶ 1; see also *Depo. Katri* at 72:19-25 (Katri believes this duty is required by an escrow officer and a title officer). Plaintiff also intends to have Katri testify on a title insurer’s duty to (2) inform an insured of property that is encumbered or does not belong to the seller; (3) not issue a title policy months after closing even when relying on the explicit instructions of the insured; (4) not issue a title policy that contains a legal description

different from the real estate purchase contract; (5) its insured after becoming aware of a potential claim; (6) preserve records after becoming aware of a claim; and (7) to respond and remedy an insured in response to a claim. Ex. "B," *Pl's. Supp. Discl. Witnesses* at 2, ¶ 4; see also *Id.* at 3, ¶¶ 8-9, 11-13.

Katri is not qualified to testify on the above specific duties and obligations of a title officer. Katri has received little training, picked up by only (1) attendance of an annual seminar where both escrow matters and title insurance matters are discussed, (2) periodic emails received from the insurance underwriter and (3) employment as an escrow officer. Ex. "C," *Depo. Katri* at 9:19-24, 10:2-11:7, 31:2-7. As Katri recognized, her knowledge of title officers comes chiefly from on-the-job experience:

BERGMAN: Can you tell me, in regards to that, what special kinds of training have you received when it comes to being a title insurer. Let's start with that one.

KATRI: In the title business, it's really hard to say that you go to a school to learn the business. So it's mainly on-the-job training.

Ex. "C," *Depo. Katri* at 9:19-24. However, Katri's job experience has been limited. While academic training is not a prerequisite to expert testimony, "there must be a demonstration that the witness has acquired, through some type of training or experience, the necessary expertise and knowledge to render the proffered opinion." *State v. Glass*, 146 Idaho 77, 82-83, 190 P.3d 896, 901-902 (Idaho App. 2008). While Katri has thirty-four years (34) years "in the business," a closer look at that work reveals Katri is not qualified. Ex. "C," *Depo. Katri* at 10:7-9.

BERGMAN: Now, working with the title department, what did you mean by that?

KATRI: Well, usually in the businesses or offices that I've worked at, the title company or the title department is separate with the escrow department. So the titling department is the one that prepares your title commitment and tells you exactly how the property stands right now, legal description, taxes, liens against the property. You copy that from the title department, and that's where you base your work off of so you can make sure you get clear title for your buyer.

...

BERGMAN: Now as escrow officer, would you be the one to put together the title commitments?

KATRI: No.

BERGMAN: Who would do that?

KATRI: The title department does that.

BERGMAN: The title department, okay. So you would essentially facilitate gathering all of this information to make sure at final closing everything was ready to go?

KATRI: Yes

Ex. "C," *Depo. Katri* at 16:15-24; 19:2-10. In all of her employment history, Katri has worked in a non-supervisory role, solely as escrow officer. *Id.* at 13:5-12; 14:7-10; 19:16-20; 21:15-23:24; 25:6-11. Additionally, in every place that Katri has worked, the escrow and title departments remained distinct and separate. See Ex. "C," *Depo. Katri* at 26:23-27:16. Understandably then, Katri is less familiar with the rules, regulations and policies of a title officer, and has systematically referred title insurance questions to the title department:

BERGMAN: So, now, as we talked about all of this, it looks like your focus over the last 34 years has been as an escrow officer; correct?

KATRI: Yes.

...

BERGMAN: Did you ever work directly in the title insurance department of these different companies?

KATRI: No.

BERGMAN: Would you say that you're more familiar with the rules and policies that regard escrow officers or title officers?

KATRI: Escrow officers.

...

BERGMAN: So when it comes to real expertise of title stuff, do you look a lot to the underwriter for guidance on that?

KATRI: Normally, I would go to my title department. And then if they have any questions, they will go to the underwriter.

Ex. "C," *Depo. Katri* at 28:12-15; 29:8-14; 31:8-18.

While Katri now holds the title of "president" at *Mountain West Title and Escrow*, her title is not indicative of any experience as a title officer:

BERGMAN: So is that your official title right now?

KATRI: That's what they have on the State records. But I normally go by escrow officer.

BERGMAN: As being president, was that just for State records?

KATRI: Yes.

BERGMAN: Is that because you need to have a broker - - or not a broker, but a principal?

KATRI: Yes.

Ex. "C," *Depo. Katri* at 26:14-22. Katri has never worked directly in a title department, and even as president of Mountain West Title and Escrow does not do so now. See *Id.* at 30:1-3.

At most, Katri's understanding of the duties and obligations of a title officer are superficial. As an example, Katri understands that a title officer may issue a title commitment, but Katri does not understand exactly what that title officer must do to properly prepare that title commitment:

BERGMAN: What does that look like to you that they [Northern Title] were doing?

KATRI: Getting ready to do their title commitment.

BERGMAN: Okay. And when you say "they," do you mean it looks like Northern Title was getting ready to do their title commitment?

KATRI: Yes, their title department.

BERGMAN: Have you reviewed these documents that are behind this first page?

KATRI: No.

BERGMAN: If you did review them, would you be able to tell whether or not they were properly prepared for making the title commitment?

KATRI: Probably not.

BERGMAN: What would you need to be able to do that, or can you do that?

KATRI: Well, I'm not a title officer, so I probably would not be able to do it.

Ex. "C," *Depo. Katri* at 59:8-25. Similarly, when asked what sorts of training she received on Idaho imposed duties, procedures and standards of title officers, Katri answered "[w]ell, I'm not a title officer, so I wouldn't do any training on title officer." *Id.* at 143:3-12.

The Supreme Court of Idaho held that a witness "may be qualified to render opinions about some things within a particular professional field but not others." *Id.* (citing *State v. Eytchison*, 136 Idaho 210, 213, 30 P.3d 888, 991 (Idaho App. 2001)). Here, while Katri may be qualified to

testify on the duties and obligations of an escrow officer, she is not qualified to testify on the duties and obligations of a title officer.

By way of example in *Jerome Thriftway Drug, Inc. v. Winslow*, the Supreme Court of Idaho upheld the exclusion of Fire Chief Hosack from testifying as an expert on electricity. 110 Idaho 615, 620, 717 P.2d 1033, 1037 (Idaho 1986). The Court held that "although he had practical experience and had attended numerous seminars in fire-cause investigation," Chief Hosack did not have the specific knowledge to qualify him as an expert witness in electricity. *Id.* Just as in *Jerome Thriftway*, Katri lacks the specific knowledge necessary to opine on the duties and obligations imposed upon a title insurer:

BERGMAN: Ms. Katri, you testified that you are familiar with the laws and regulations governing escrow officers; correct?

KATRI: Yes.

BERGMAN: Are you also just as familiar with the laws and regulations governing title officers?

KATRI: Probably not as much.

BERGMAN: And why not?

KATRI: Because I'm an escrow officer, not a title officer.

Ex. "C," *Depo. Katri* at 165:7-16.

Plaintiff intends to have Ms. Lenore Katri testify on the detailed duties and obligations imposed upon a title insurer. However, the record reveals that Katri is not qualified to testify on the specific duties and obligations of a title officer. While she has worked for many years "in the business," her position has been strictly limited to that of an escrow officer. Her knowledge,

experience, skill and education are related to those of an escrow officer. In contrast, Katri's comprehension of the duties and obligations imposed upon a title officer are indirect, superficial in nature and do not rise to the level of an expert in that area.

CONCLUSION


Under Rule 26(b)(4)(A)(i) and the *Order Setting Jury Trial*, Plaintiff's experts should be excluded from trial. Plaintiff did not disclose his experts' opinions, the basis of those opinions or the specific documents relied upon by those experts until June 14, 2012 – the day of deposition and over three (3) months after the Court's deadline. Notwithstanding, Northern Title has pending its own request to make its own late expert disclosures. In turn, Plaintiff has pending his own motion to exclude Northern Title's expert, but amazingly on the same alleged grounds for which Plaintiff is also guilty. Therefore, to the extent Plaintiff seeks to exclude Northern Title's experts on the basis of untimely and/or late disclosures, equity also dictates the exclusion of Plaintiff's experts.

Notwithstanding the above, Lenore Katri lacks the necessary expertise to testify on the duties and obligations of a title officer. Her comprehension of title officer duties has been gained solely through her work-experience as an escrow officer. She has never worked directly in a title department, and those two departments have always been separate. While Katri may possess practical knowledge about a title officer, such is not sufficient to make Katri qualified as an expert on that topic.

[Intentionally Left Blank, Signatures to Follow]

DATED this 29th day of June, 2012.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of June, 2012, I served a true and correct copy of the above and foregoing **DEFENDANT NORTHERN TITLE'S MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE LENORE KATRI AND GREGORY KELLEY** to the following person(s) as follows:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

[x] U. S. Mail/Postage Prepaid
[] Hand Delivery
[] Overnight Mail
[] Facsimile (208-524-3391)
[x] Email (Nathan@pmholaw.com)

Randall C. Budge
Jason E. Flaig
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391

[x] U.S. Mail/Postage Prepaid
[] Hand Delivery
[] Overnight Mail
[] Facsimile (435-752-6301)
[x] Email rcb@racinelaw.net
jeff@racinelaw.net

Phillip J. Collaer
Anderson Julian & Hull, LLP
250 S. 5th Street, Ste. 700
PO Box 7426
Boise, Idaho 83707-7426

[x] U. S. Mail/Postage Prepaid
[] Hand Delivery
[] Overnight Mail
[] Facsimile (208-344-5510)
[x] Email (pcollaer@ajhlaw.com)

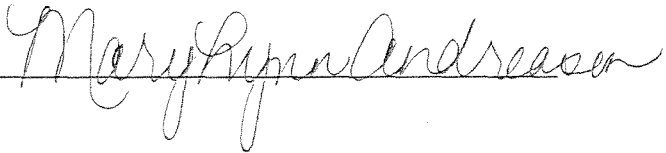


EXHIBIT "A"

NT Memorandum

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO
Jan 27 2012 9:33 am
DATE TIME
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

DEPUTY

CASE NO.

Register # CV-2009-0000183

STEVEN CUMMINGS,
Plaintiff,

-vs-

ROGER L STEPHENS,
NORTHERN TITLE COMPANY OF IDAHO, INC.,
JOHN DOES I - X,
Defendants.

NORTHERN TITLE COMPANY OF IDAHO, INC.,
Third Party Plaintiff,

-vs-

DOROTHY S JULIAN,
EVAN E SKINNER,
RYAN L. OLSEN,
EXIT REALTY OF BEAR LAKE,
JOHN DOES 1-X
Third Party Defendants.

ORDER SETTING JURY TRIAL

(1) TRIAL DATE. This matter is set for JURY TRIAL on the 31st day of July, 2012, AT THE HOUR OF 9:00 A.M., in the Bear Lake County Courthouse, Paris, Idaho. All deadlines listed below shall apply to the trial setting listed above. The parties should plan to try the case on that date. A continuance of the trial date shall occur only upon written Motion or Stipulated Motion

to the Court which clearly states the reasons for the requested continuance and which certifies that the request or stipulation has been discussed with and agreed to by the party(ies). An Order continuing the trial date to the backup trial date will not alter the deadlines set forth in this Order, except for good cause shown.

(2) PRE-TRIAL CONFERENCE. No pre-trial conference will be held unless requested by any party in writing at least 30 days prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least 21 days prior to Trial, and shall include:

(A) A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all exhibits to be offered at trial by both parties. The Exhibit List shall indicate: 1) by whom the exhibit is being offered, 2) a brief description of the exhibit, 3) whether the parties have stipulated to its admission, and if not, 4) the legal grounds for any objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B) A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C) A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witness' testimony will be objected to in its entirety and the legal grounds therefore.

(D) A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E) A statement that counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F) A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G) A statement of all issues of fact and law which remain to be litigated, listing which

party has the burden of proof as to each issue.

(H) A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I) A list of any orders requested by the parties which will expedite the trial.

(J) A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

(3) MOTIONS TO ADD NEW PARTIES OR AMEND PLEADINGS shall be filed no later than 60 days after the date of this Order.

(4) DISCOVERY must be served and completely responded to at least 60 days prior to trial. This includes supplementation of discovery responses required by I.R.C.P. 26(e), unless good cause is shown for late supplementation. Discovery requests must be responded to in a timely way as required by the I.R.C.P. The deadlines contained in this Order cannot be used as a basis or reason for failing to timely respond to or supplement properly served discovery, including requests for disclosure of witnesses and/or trial exhibits. Discovery disputes will not be heard by the Court without the written certification required by I.R.C.P. 37(a)(2).

(5) WITNESS DISCLOSURE. Except as previously disclosed in responses to discovery requests, Plaintiff shall disclose all fact and expert witnesses no later than 140 days before trial. Defendants shall disclose their fact and expert witnesses no later than 105 days before trial. Rebuttal witnesses shall be disclosed no later than 70 days before trial. Expert witnesses shall be disclosed in the manner and with the specificity required by I.R.C.P. 26(b)(4)(A)(i). Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice.

(6) MOTIONS. DISPOSITIVE MOTIONS, and responses thereto, shall comply in all respects with I.R.C.P. 56 and be filed no later than 90 days before trial. ALL OTHER MOTIONS, including any Motion in Limine, shall be filed and heard by the Court no later than 30 days before trial. One duplicate Judge's Copy of all Motions, and any opposition thereto,

together with supporting affidavits and documents, shall be submitted directly to the Court's chambers in Bannock County. All the duplicates must be stamped "Judge's Copy" to avoid confusion with the original pleading. All other pleadings, notices, etc., should be filed with the Clerk without copies to the Court's chambers.

(7) **TRIAL BRIEFS.** Trial briefs are encouraged but not required. If submitted, trial briefs should address substantive factual, legal and/or evidentiary issues the parties believe are likely to arise during the trial, with appropriate citation to authority. Any trial brief should be exchanged between the parties and submitted to the Court, including a duplicate Judge's Copy submitted to chambers in Bannock County, no later than 10 days prior to trial.

(8) **PRE-MARKED EXHIBITS AND AN EXHIBIT LIST IN THE FORM ATTACHED HERETO** shall be exchanged between the parties and filed with the Court no later than 10 days prior to trial. Each party shall also lodge with the Court at chambers a duplicate completed exhibit list together with one complete, duplicate marked set of that party's proposed exhibits for the Court's use during the trial. Unless otherwise ordered, Plaintiff shall identify exhibits beginning with the letter "A" and the Defendant shall identify exhibits beginning with the number "1."

(9) **JURY INSTRUCTIONS.** Proposed jury instructions and verdict forms requested by any party shall be prepared in conformity with I.R.C.P. 51(a), except that they shall be filed with the Court and exchanged between the parties at least 7 days prior to trial. Except for good cause shown, proposed jury instructions should conform to the pattern Idaho Jury Instructions (IDJI) approved by the Idaho Supreme Court. In addition to submitting written proposed instructions that comply with Rule 51(a), the parties shall also submit both a clean version and a version with cited authority by e-mail to the Court's Clerk, in Word format, at least 7 days prior to trial. Certain "stock" instructions need not be submitted. These will typically include IDJI 1.00, 1.01, 1.03,

1.03.1, 1.05, 1.09, 1.11, 1.13/1.13.1, 1.15.1, 1.17, 1.20.1, and 1.24.1. It is requested that the parties agree on the basic instruction giving the jury a short, plain statement of the claims, per IDJI 1.07.


(10) **MEDIATION**. Pursuant to I.R.C.P. 16(k)(4), the parties are ORDERED to mediate this matter, and the mediation shall comply with I.R.C.P. 16(k). Mediation must be held no later than 30 days prior to trial.

(11) **TRIAL PROCEDURES**. A total of THREE (3) trial days have been reserved for this trial. If the parties believe that more trial days will be required, the parties are ORDERED to notify the Court of this request no less than 60 days prior to trial. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, or as modified during trial as necessary, trial days will begin at 9:00 a.m. and close at or about 3:00 p.m., with two 20 minute recesses taken at approximately 11:00 a.m. and 1:00 p.m.

(12) **HEARINGS OR CONFERENCES WITH THE COURT**. All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk by calling 208-945-2208, ext 23. No hearing shall be noticed without contacting the Clerk.

(13) **ALTERNATE JUDGES**. Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the current presiding judge is unavailable. The list of potential alternate judges is: 1) Honorable Peter D. McDermott; 2) Honorable Stephen S. Dunn; 3) Honorable Mitchell W. Brown; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair.

DATED January 27, 2012.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

PLAINTIFF ATTORNEY:

Nathan M Olsen

485 "E" Street
Idaho Falls ID
(208) 524-3391

- ☐ Faxed
☐ Hand Delivered
☒ Mailed

DEFENDANTS ATTORNEY:

Randall C. Budge
P.O. Box 1391
Pocatello ID 83204

- ☐ Faxed
☐ Hand Delivered
☒ Mailed

Brad H Bearnson
399 North Main, Suite 270
Logan UT 84321
(435) 752-6301

- ☐ Faxed
☐ Hand Delivered
☒ Mailed

Phillip John Collaer
PO Box 7426
Boise ID 83707
(208) 344-5510

- ☐ Faxed
☐ Hand Delivered
☒ Mailed



Deputy Clerk

EXHIBIT "B"

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
ISB # 7373

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X,)
)
Defendants.)

Case No. CV-2009-183

**PLAINTIFF'S SUPPLEMENTAL
DISCLOSURE OF WITNESSES**

In addition to the fact and expert witnesses previously disclosed by the Plaintiff, Steven Cummings, Plaintiff by and through the undersigned counsel, hereby discloses the following expert witnesses that may be called at trial:

Lenore Katri
President
Mountain West Title & Escrow
390 W. Sunnyside Road, Idaho Falls, ID 83402

Ms. Katri has been in the title & escrow industry for 32 years and has been the President of Mountain West Title & Escrow, an Idaho-licensed escrow agency, in Idaho Falls, Idaho since 2006.

Ms. Katri will testify with regard to the Idaho standards for title and escrow companies, as established by law, regulation and by long standing industry practices. She will provide her analysis of the conduct of the Defendant Northern Title Company, before during and after the subject real estate purchase closed. She will also discuss the standard procedures and document preparation that a title and escrow company is required to follow, and will analyze the actions taken by Northern Title, including the numerous anomalies. Her testimony will be based on the documents and testimony on the record obtained in this case. Issues that will be discussed in Ms. Katri's analysis and testimony include the following:

- 1) Northern Title's duty to complete the transaction according to the explicit direction of the written purchase and sale agreement.
- 2) Northern Title's duty to follow the instructions and obligations of the written closing and escrow agreement.
- 3) Northern Title's duty to seek the written approval from both parties before changing any of the terms of the contract or deed.
- 4) Northern Title's duty to inform the buyer or insured of any property contained within the contract's legal description that does not belong to the seller, or is otherwise encumbered.
- 5) Northern Title's duty to record a warranty deed that is consistent with the written purchase agreement.

- 6) Northern Title's duty to not modify a warranty deed after it has been recorded, without explicit authorization from both buyer and seller.
- 7) That the modifications by Northern Title made to the deed cannot be considered in any way, shape or form as merely correcting a "scriveners error."
- 8) Whether it is appropriate to issue a title policy more than eight months after the transaction has closed, including whether a title company justified in delaying that policy because it claims that it was waiting from instruction from buyer to deed the property to a trust.
- 9) Whether it is appropriate for Northern Title to issue a title policy for a legal description that is different from the title commitment and the purchase and sale agreement, and after explicit internal direction to issue the policy according to the contract and title commitment.
- 10) Northern Title's duty to remain a neutral party as escrow and closing officer, and to disclose any actual or perceived conflicts of interest.
- 11) Northern Title's fiduciary duty toward its insured, in particular after it has become aware of a potential claim.
- 12) Northern Title's duty not to delete or destroy records once it has become aware that there has been a claim.
- 13) Northern Title's duty to properly respond to and remedy its insured when it has become aware that there is a defect in the property insured.

- 14) Any and all relevant issues with regard to her expertise as it relates to the conduct of Northern Title, including any additional issues that may be learned through discovery.

Ms. Katri has not previously testified as an expert witness. She will be compensated \$50 per hour for her time.

Gregory Kelley
Kelley Real Estate Appraisers
520 W 15th St # 100
Idaho Falls, ID 83402

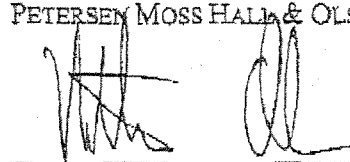
Mr. Kelley replaces Mr. Linford who was previously disclosed. Mr. Linford is not available for the rescheduled trial. Mr. Kelley will testify as to the present and future value of the subject property, and its diminished value resulting from the exclusion of the east side. His analysis will include a valuation of the property as a whole, including the acreage on the east side, compared to its diminished value as a whole without the west side acreage. He will also testify as to the value of the excluded west side property by itself. His analysis may also include valuation of portions of the property that was part of the purchase and sale agreement that was conveyed to Mr. Cummings that in fact was owned by different parties than the seller. Mr. Kelley's testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April. He will review pertinent materials, i.e. the various legal descriptions and any other relevant records to his analysis.

Mr. Kelley's qualifications and experience are attached and incorporated herein as exhibit "A." He will be paid \$3,500 for the appraisal and \$125 per hour for testimony. He has not testified in a case in the last four years.

Plaintiff reserves the right to further supplement this disclosure for the calling of rebuttal witnesses, or to address issues yet unknown that will be learned through discovery and further reserves the right to call any witness, expert or otherwise, designated or called by Defendants and/or Third Party Defendants.

DATED this 13th day of March, 2012.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13th day of March, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301

Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

Method of Service:

() mail () hand (✓) fax

Attorneys for Roger L. Stephens

() mail () hand (✓) fax

Attorneys for Northern Title Company

() mail () hand (✓) fax

*Attorneys for Dorothy Julian, Evan
Skinner, Ryan Olsen, and Exit Realty
of Bear Lake, LLC*

() mail () hand (✓) fax
courtesy chamber's copy


Nathan M. Olsen

QUALIFICATIONS OF THE APPRAISER

GREGORY G. KELLEY

Idaho Certified General Appraiser: #32
Wyoming Certified General Real Estate Appraiser: #369
Past President, Idaho/Utah Chapter, ASFMRA 2008

GENERAL EDUCATION:

Shelley High School, Shelley, Idaho
Brigham Young University, Provo, Utah
Utah Technical College, Provo, Utah

WORK HISTORY:

Construction Coordinator, Three Fountains of Idaho Falls - 1976-1978
Self Employed; Building Contractor - 1977-1980
Administrator; OHC Dental Group - 1980-1985
Appraiser - Kelley Real Estate Appraisers, Inc. - 1985-Present

APPRAISAL EDUCATION & TRAINING:

Residential Appraisal Course; EIVTS, Idaho Falls 1977
Report Writing Seminar; Bozeman, Montana ASFMRA 1985
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-1
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-2
Right-of-Way Training; Idaho Transportation Dept. Boise, Idaho - 1986
Mathematics of Finance Seminar, Twin Falls, ID ASFMRA 1988
Appraisal Course; Phoenix, Arizona, ASFMRA # A-20, 1988
Sales Analysis Seminar, Idaho Falls, ID ASFMRA, 1989
Standards of Professional Practice & Ethics, AIREA, Boise, Idaho 1990
Appraisal Course: Wichita, Kansas, ASFMRA # A-30, 1991
Certification School, Burley, ID, ASFMRA, # A-45, April 1991
Idaho Certified General Appraiser Exam, CGA # 32, June 1991
Highest and Best Use Seminar; Boise, Idaho, ASFMRA, January 1993
FIRREA Update - August 1994, Various Appraisal Seminars
Standards & Ethics, ASFMRA, Jackpot, NV, May 95
Rural Residential Appraisal Seminar, Jackpot, NV ASFMRA, May 1997
Conservation Easement Seminar, Denver, CO, ASFMRA, November 1998
Federal Land Exchange & Acquisition, Nashville, TN, ASFMRA, November 2000
Income Approach, Discounting & Leasing, Jackpot, NV ASFMRA, May 2003
Appraising Land in Transition Seminar, Jackpot NV ASFMRA, May 2004
USPAP Update Course, Idaho Falls, ID ASFMRA, January 2005
Water Rights Seminar, Idaho Falls, ID; ID/UT Chapter ASFMRA, January 2005
Livestock Ranch Appraisal Seminar, Jackpot, NV ASFMRA, May 2005
Various Current Appraisal Topic Seminar, Boise, ID; ID/UT ASFMRA, January 2006
USPAP Update Course, Twin Falls, ID ASFMRA, January 2006



NT Memorandum

Code of Ethics, Twin Falls, ID ASFMRA, January 2006
 Understanding Conservation Easements, Atlanta, GA ASFMRA, February 2007
 Government Appraisal Seminar, Atlanta, GA ASFMRA, February 2007
 Recreational Properties Seminar, Atlanta, GA ASFMRA, February 2007
 2008 Appraisal Requirements, Atlanta, GA ASFMRA, February 2007
 Understanding the Next Farm Bill, Atlanta, GA ASFMRA, February 2007
 Mining Seminar, Jackpot, NV ASFMRA, May 2007
 Timber Seminar, Jackpot, NV ASFMRA, May 2007
 Yellow Book Seminar, Boise, ID Appraisal Institute, October 2007
 1031 Exchange Seminar, Salt Lake City, UT, Realtors Land Institute, January 2008
 Data Analysis Seminar, Jackpot, NV ASFMRA, May 2008
 Cost Estimating Seminar, Jackpot, NV ASFMRA, May 2008
 USPAP Update Course, Idaho Falls, ID; ASFMRA, January 2009
 Various Current Appraisal Topic Seminar, Idaho Falls, ID; ASFMRA, January 2009
 Wind Power & Conservation Easement Seminars, Boise, ID; ASFMRA, January 2010
 USPAP Update Course, Las Vegas, NV; Appraisal Institute, January 2011
 Appraisal of Nursing Home Facilities; On-line Course; Appraisal Institute, April 2011
 USPAP Update Course, Logan, UT; ASFMRA, January 2012

APPRAISAL ASSIGNMENTS INCLUDE THE FOLLOWING CLIENTS:

Attorneys	Major Lending Institutions
Accountants	Transfer Companies
Major Oil Companies	The Nature Conservancy
City of Idaho Falls	City of Pocatello
City of Driggs	Idaho Dept of Fish & Game
Idaho State Land Dept.	Idaho Transportation Dept.
Bureau of Land Management	Bureau of Reclamation
Internal Revenue Service	Small Business Administration
U.S. Forest Service	Farmers Home Administration
F.D.I.C.	Resolution Trust Corporation
U.S. Army Corps of Engineers	Utah Power and Light
Banks and Insurance Companies	Idaho Dept. Parks & Recreation
Teton Regional Land Trust	Union Pacific Railroad
Various other government agencies, companies and individuals	

NT Memorandum

EXHIBIT "C"

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,)	
Plaintiff,)	
vs.)	Case No. CV-2009-183
ROGER L. STEPHENS, an individual)	
residing in Providence, Utah,)	DEPOSITION OF
NORTHERN TITLE COMPANY OF IDAHO,)	LENORE KATRI
INC., and Idaho Corporation, JOHN)	JUNE 14, 2012
DOES I-X,)	
Defendants.)	

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

Lenore Katri 6/14/2012

1 Q. Okay. Did you complete high school?

2 A. I did.

3 Q. Where at?

4 A. Eureka -- excuse me. McKinleyville,
5 California.

6 Q. Okay. I'm originally from Northern
7 California.

8 A. Oh.

9 Q. Did you go to any college?

10 A. I had two years of business college.

11 Q. Okay. And did you get a degree from that, or
12 was it kind of like a --

13 A. Just a general.

14 Q. Was it a degree, or did you just do classes?

15 A. Just did classes.

16 Q. You understand you're here in your capacities
17 regarding title insurance and escrow; correct?

18 A. Correct.

19 Q. Can you tell me, in regards to that, what
20 special kind of training have you received when it comes
21 to being a title insurer. Let's start with that one.

22 A. In the title business, it's really hard to say
23 that you go to a school to learn the business. So it's
24 mainly on-the-job training.

25 Q. So can you recall any classes that you've been

Lenore Katri 6/14/2012

1 to?

2 A. You know, I've gone to a few seminars along
3 the way. I've been in the business for about 34 years.
4 And along the way, there's always seminars that you go
5 to, to learn certain things and keep up on changes in
6 the business.

7 Q. How many years did you say you've been in the
8 business?

9 A. About 34.

10 Q. About 34.

11 Over the last 34 years, kind of on an annual
12 basis, how often did you go to those seminars?

13 A. Probably once a year.

14 Q. What kind of topics would these seminars
15 cover?

16 A. Lots of different things. A lot of them are
17 regarding easements, 1031 tax deferred exchanges, just
18 general escrow business-type things.

19 Q. Now, these things, they cover escrow matters,
20 you said?

21 A. Some, um-hmm.

22 MR. OLSEN: Excuse me. Make sure when you
23 answer, say "yes." The "um-hmm," "hmm-ums" --

24 MR. BERGMAN: Thank you. Sorry.

25 Q. (BY MR. BERGMAN) So you just testified that

Lenore Katri 6/14/2012

1 some of them do cover escrow matters?

2 A. Yes.

3 Q. Do some of them cover title insurance matters?

4 A. Yes.

5 Q. Is it kind of even split or focused one way or
6 the other?

7 A. It's probably even.

8 Q. Now, you've been in the business for 34 years.
9 And you testified that you moved to Utah in 1991 -- or
10 Idaho. I'm sorry. You moved to Idaho in 1991.

11 A. Yes.

12 Q. Can you explain to me back from the beginning
13 when you first started in this industry and explain to
14 me the progress of your employment.

15 A. I was with a company when I first started
16 called Eureka Title Company. It was a privately-owned
17 company, owned by an attorney. I worked for him for
18 eight years.

19 And then I moved out of the town of Eureka to
20 Santa Rosa, went to work for Ticor Title in Santa Rosa.

21 Q. How do you spell Ticor?

22 A. T-I-C-O-R.

23 Q. That was in Santa Rosa?

24 A. I worked for branch office in Windsor. Their
25 main office was in Santa Rosa.

1 it, the first place that you worked?

2 A. Eureka Title.

3 Q. The first place was Eureka Title. I don't
4 know where I got the word "Leon."

5 When you worked at Eureka Title, what was your
6 position there?

7 A. Escrow officer.

8 Q. Escrow officer?

9 A. Um-hmm.

10 Q. Was that a supervisory kind of position or was
11 it a --

12 A. No.

13 Q. No?

14 A. In training.

15 Q. Okay. So you were in training?

16 A. Yes.

17 Q. As an escrow officer, what were your duties
18 there?

19 A. To open orders, take instructions, work with
20 the realtors, work with the title department, and
21 perform the final closing.

22 Q. What was the second to last thing you said?
23 I'm sorry. You said, "open orders, take instructions,
24 work with realtors," and there was one -- and there was
25 a final --

Lenore Katri 6/14/2012

1 MR. OLSEN: Would you repeat that for us.

2 (Record read.)

3 MR. BERGMAN: Thank you.

4 Q. (BY MR. BERGMAN) Anything else that you did
5 with them?

6 A. No, just...

7 Q. Okay. Did you have this same escrow officer
8 position for the full eight years that you were at
9 Eureka Title?

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. Can you explain to me, what does it mean when
14 you say "open orders"?

15 A. Normally, realtors will give you or call in an
16 order that tells you -- they give you a copy of the real
17 estate purchase contract. So that opens your order with
18 your buyers and sellers, tells you who the lender is,
19 just gives you your general information of what that
20 order is going to contain.

21 Q. And, you know, from that point do you work a
22 lot with the realtors after you get an order from the
23 realtors?

24 MR. OLSEN: Counsel, let me just -- are we
25 talking about her time with a certain company, or are we

1 Q. Did you get instructions on precisely what
2 property is for sale?

3 A. Oh, yes.

4 Q. Okay. And so you also mentioned your third
5 thing, you work with realtors.

6 Is that kind of interrelated with all of this?

7 A. It is.

8 Q. How so?

9 A. Well, they notify you when they want the
10 closing to happen and if there's any changes. If the
11 purchase price changes, they send us an addendum, that
12 kind of thing.

13 Q. Now, working with the title department, what
14 did you mean by that?

15 A. Well, usually in the businesses or the offices
16 that I've worked at, the title company or the title
17 department is separate with the escrow department.

18 So the titling department is the one that
19 prepares your title commitment and tells you exactly how
20 the property stands right now, legal description, taxes,
21 liens against the property. You copy that from the
22 title department, and that's where you base your work
23 off of so you can make sure you get clear title for your
24 buyer.

25 Q. So when you say you get clear title for your

1 A. Yes.

2 Q. Now, as the escrow officer, would you be the
3 one to put together the title commitments?

4 A. No.

5 Q. Who would do that?

6 A. The title department does that.

7 Q. The title department, okay.

8 So you would essentially facilitate gathering
9 all of this information to make sure at final closing
10 everything was ready to go?

11 A. Yes.

12 Q. Is there anything else about your employment
13 at Eureka Title that we haven't talked about that you
14 did there?

15 A. No.

16 Q. Looking at Ticor down in Windsor, California,
17 you worked there for five years.

18 Were your duties the same as they were in
19 Eureka or different?

20 A. Same.

21 Q. Same? Any differences?

22 A. No, not really.

23 Q. Were you in a supervisory capacity?

24 A. I worked in a three-person office. I was head
25 escrow officer there, but it was a small branch. So...

1 A. Immediately. I had the job before I left
2 California.

3 Q. Okay. So the job was set up before you left?

4 A. It was.

5 Q. Is that because someone at Ticor knew people
6 at Bonneville Land and Title?

7 A. No.

8 Q. How did you find out about Bonneville Land and
9 Title?

10 A. I sent them my resume.

11 Q. So you found out they were hiring and sent
12 them your resume?

13 A. I didn't even know they were hiring.

14 Q. Well, I wish the market was still that good.

15 So you were at Bonneville Land and Title for
16 15 years. What was your position when you were at
17 Bonneville Land and Title?

18 Understandably, there might have been some
19 changes. When you first started there, let's say, what
20 was your position?

21 A. Escrow officer.

22 Q. Escrow officer?

23 A. Um-hmm.

24 Q. Were you a head escrow officer? Or...

25 A. No.

Lenore Katri 6/14/2012

1 Q. So it was not a supervisory position?

2 A. No.

3 Q. As escrow officer at Bonneville Land and
4 Title, were your duties any different than they were at
5 Eureka?

6 A. No.

7 Q. So they were just the same?

8 A. Just the same.

9 Q. Now, over this 15-year period while you're
10 with Bonneville Land and Title, did you stay in that
11 position as escrow officer?

12 A. I did.

13 Q. Did you ever advance into any other positions?

14 A. No.

15 Q. Did you ever become a head escrow officer?

16 A. I did. I was, yes.

17 Q. Now, what's the difference between an escrow
18 officer and a head escrow officer?

19 A. Basically, none. It's all of the same work.
20 Sometimes there's a little bit more.

21 Q. And what would be the little bit more?

22 A. More files to work on.

23 Q. But other than that, it's the same work?

24 A. Yes.

25 Q. And you're responsible for other escrow

Lenore Katri 6/14/2012

1 officers under you? Or explain that for me, I guess.

2 In what way did you supervise these other
3 employees, if at all?

4 A. I didn't supervise really at all. The owner
5 of the property -- owner of the title company was an
6 attorney, and so he basically ran the company.

7 Q. So for that entire 15 years, you had the same
8 escrow office position?

9 A. Yes.

10 Q. I've asked you this four times now for
11 different companies.

12 Were the duties for Bonneville the same as
13 Eureka?

14 A. Yes.

15 Q. No differences?

16 A. No differences.

17 Q. Bonneville Land and Title then got sold to
18 AmeriTitle, and AmeriTitle kept you on as an employee?

19 A. Yes.

20 Q. What was your position with AmeriTitle?

21 A. Escrow officer.

22 Q. Were there any changes in your position while
23 you worked with AmeriTitle?

24 A. No.

25 Q. Any changes in your duties while you worked

Lenore Katri 6/14/2012

1 with AmeriTitle?

2 A. No.

3 Q. So after AmeriTitle, why did you leave
4 AmeriTitle?

5 A. I had a better offer.

6 Q. And was this better offer from Mountain West
7 Title?

8 A. Yes.

9 Q. And how did they approach you on that?
10 Or do they approach you, or did you approach
11 them?

12 A. They approached me.

13 Q. How did they approach you?

14 A. They just asked me if I was interested in
15 making a job change.

16 Q. Was there any difficulties incurred in that
17 transition between AmeriTitle and Mountain West Title?

18 A. No.

19 Q. It was a friendly transition?

20 A. Um-hmm, yes.

21 Q. Looking at Mountain West Title, so what year
22 did you start at Mountain West Title?

23 A. 2006.

24 Q. And when you started at Mountain West Title,
25 what was your position?

Lenore Katri 6/14/2012

1 A. Escrow officer. And I have a 10-percent
2 interest in the company.

3 Q. So, now, when you joined the company, did you
4 join it as a 10-percent owner?

5 A. Yes. It was a brand new company.

6 Q. So Mountain West Title started in 2006?

7 A. Yes.

8 Q. In your capacities as an escrow officer, were
9 your duties any different than what they were at Eureka
10 Title?

11 A. No.

12 Q. Were the same kind of procedures and things
13 like that followed as they were at Eureka Title?

14 A. Yes.

15 Q. Did you work in a supervisory capacity at
16 Mountain West Title?

17 A. Yes.

18 Q. And how so?

19 A. Just have a couple of other escrow officers
20 that we have in our office and do a little bit of
21 training. And...

22 Q. So you would train some of the escrow officers
23 that were new?

24 A. Um-hmm.

25 Q. Is that a yes?

Lenore Katri 6/14/2012

1 A. Yes, sorry.

2 Q. Thank you.

3 Anything else you would do besides train?

4 A. No.

5 Q. All right. What's your position now at
6 Mountain West title?

7 A. Escrow officer.

8 Q. Escrow officer?

9 A. Um-hmm.

10 Q. Now, I'm not trying to be nosy.

11 But I looked online, and it said that you were
12 president?

13 A. Yes.

14 Q. So is that your official title right now?

15 A. That's what they have on the State records.
16 But I normally go by escrow officer.

17 Q. As being the president, was that just for
18 State records?

19 A. Yes.

20 Q. Is that because you need to have a broker --
21 or not a broker, but a principal?

22 A. Yes.

23 Q. Now, I hate to back up, but we talked in
24 detail about Eureka Title and how there was an escrow
25 kind of department and a title department; right?

Lenore Katri 6/14/2012

1 A. Yes.

2 Q. Was that the same kind of setup that you saw
3 at Tricor?

4 A. Ticor.

5 Q. Ticor?

6 A. Yes.

7 Q. Was that the same setup that you saw at
8 Bonneville Land and Title, there was these two
9 departments?

10 A. Yes.

11 Q. And that was the same setup you saw at
12 AmeriTitle?

13 A. Yes.

14 Q. And is that how you saw it set up at Mountain
15 West Title?

16 A. Yes.

17 Q. Are there any kind of escrow associations in
18 the State of Idaho?

19 A. I think there is in the State of Idaho, but
20 there is not in Idaho Falls.

21 Q. Okay. Are you a member of any of them?

22 A. No.

23 Q. Have you ever been?

24 A. Years ago.

25 Q. This was years ago with Bonneville Land and

1 Title?

2 A. Yes.

3 Q. But now your membership has elapsed?

4 A. There's nothing here to be a member of.

5 Q. Have you ever served in a capacity on any kind
6 of a committee with regards to escrow?

7 A. No.

8 Q. Have you ever served in your capacity on any
9 committee in your capacities with regards to title
10 insurance?

11 A. No.

12 Q. So, now, as we talked about all of this, it
13 looks like your focus over the last 34 years has been as
14 an escrow officer; correct?

15 A. Yes.

16 Q. Can you tell me, what would be the difference
17 between -- and maybe I'm using the wrong terminology,
18 but what would be the difference between an escrow
19 officer and a title officer, someone who worked in the
20 escrow department?

21 A. Title insurance is where they search the
22 titles and make sure of the -- they check the county
23 records. And most of the title companies have their own
24 plans on the computers, so they keep those updated all
25 of the time. And that's where your title commitment

1 comes out of. We give that to the escrow officer that's
2 going to be doing the closing.

3 Q. Which would have been you?

4 A. Which would have been me.

5 And that tells me what's against the property
6 and what I need to do in order to get the file ready to
7 close.

8 Q. Did you ever work directly in the title
9 insurance departments of these different companies?

10 A. No.

11 Q. Would you say that you're more familiar with
12 the rules and policies that regard escrow officers or
13 title officers?

14 A. Escrow officers.

15 Q. How familiar would you say you are with the
16 rules and policies that govern title officers?

17 A. Pretty familiar.

18 Q. How did you become familiar with that?

19 A. Just working with the title department through
20 the years.

21 Q. Through your interaction with the title
22 department; is that correct?

23 A. Yes.

24 Q. But you never worked in the title department?

25 A. No.

1 Q. Do you work directly in the title department
2 now?

3 A. No.

4 Q. Are there any special books or publications
5 that you've read that deal with being an escrow officer?

6 A. Over the years, there have been a few, but not
7 very many.

8 Q. Can you recall what those were?

9 A. Hmm-um.

10 Q. Can you recall what the topics of those were?

11 A. Just general escrow, what happens in an
12 escrow, what you do, your function.

13 Q. So is it a relatively-general layout of what
14 an escrow does?

15 A. Yes.

16 Q. Did you read any publications or any kind of
17 instruction booklets on title insurance agents? Not
18 agents.

19 What would you use as the correct term for a
20 title insurance officer?

21 A. A title officer.

22 Q. Thank you. I'm glad you clarified it for me
23 because I feel like I could have been confusing you.

24 A. No.

25 Q. Have you read any kind of training or booklets

Lenore Katri 6/14/2012

1 or publications on being a title officer?

2 A. Our underwriter normally sends out e-mails
3 when they have anything come up.

4 It's changing. You know, they talk about
5 easements sometimes and, you know, just general title
6 stuff. And you read through those and make sure you
7 know that there has been some changes.

8 Q. So when it comes to real expertise of title
9 stuff, do you look a lot to the underwriter for guidance
10 on that?

11 MR. OLSEN: Object to foundation.

12 MR. BERGMAN: Well, let me -- if it's an
13 objection as to form, that's fine.

14 Q. (BY MR. BERGMAN) But you can go ahead and
15 answer, if you can.

16 A. Normally, I would go to my title department.
17 And then if they have any questions, they will go to the
18 underwriter.

19 Q. I know we're hashing a lot into you as an
20 independent individual and you as a business person, but
21 have you, yourself, written any articles or publications
22 on being an escrow officer?

23 A. No.

24 Q. Written any publications or articles just
25 about escrow in general?

1 Q. So my question is: Have you performed -- and
2 I'm not asking what the analysis was, I'm just asking:
3 Have you performed an analysis on this first issue,
4 Northern Title's duty to complete the transaction
5 according to the explicit direction of the written
6 purchase and sale agreement?

7 A. Yes.

8 Q. Have you written down your analysis of that
9 issue?

10 A. No.

11 Q. Do you have a written report that you
12 formulated regarding that issue?

13 A. No.

14 Q. When looking at No. 1 here, while it does say
15 that these are issues that may be discussed by you or
16 will be discussed by you, this No. 1 doesn't say what
17 your opinion is, does it?

18 A. No.

19 Q. It doesn't state any reasons or the basis
20 behind your opinion; correct?

21 A. No.

22 Q. And it also doesn't reference to any specific
23 documents or information that you may have relied on in
24 making that opinion; correct?

25 MR. OLSEN: Object.

Lenore Katri 6/14/2012

1 MR. BERGMAN: On what basis?

2 MR. OLSEN: It's in the previous paragraph.

3 But, anyway, I'll let the witness answer.

4 MR. BERGMAN: Well, I'm going to ask that you
5 don't coach the witness.

6 But go ahead.

7 THE WITNESS: And that question again, please?

8 Q. (BY MR. BERGMAN) Looking at paragraph No. 1,
9 does it make any reference to the specific documents
10 that you relied on --

11 A. No.

12 Q. -- in making that opinion?

13 A. No.

14 Q. Let's look up to this second paragraph as well
15 in the page. And I just want to read the -- well,
16 actually, can you read the second-to-last sentence of
17 that paragraph which starts "her testimony."

18 A. "Will be based on the documents and testimony
19 of the record obtained in this case."

20 Q. Okay. In reading that, does that specifically
21 reference to what particular documents you relied on in
22 forming your opinion?

23 A. It doesn't specifically say what documents I
24 looked at.

25 Q. Okay. Does it specifically say what

Lenore Katri 6/14/2012

1 information you relied on?

2 A. No.

3 Q. If you could read this time a little bit more
4 in detail -- I don't know how much in detail you read
5 the other ones, but Nos. 2 through 13 of these
6 paragraphs for me.

7 A. "Northern Title's duty" --

8 Q. I'm sorry. I don't mean to cut you off.

9 But if you could read them in detail to
10 yourself. I don't want you to have to do that to
11 yourself.

12 A. Thank you.

13 Okay.

14 Q. Are you done?

15 A. Done.

16 Q. Okay. As to each of those that you just read,
17 have you formulated an opinion on each of those issues?

18 A. Yes.

19 Q. I want to ask you the same questions as I did
20 as to No. 1.

21 Did any of those state what your actual
22 opinion is?

23 A. No.

24 Q. Did any of them state the basis or the reason
25 behind your opinion?

Lenore Katri 6/14/2012

1 MR. OLSEN: Counsel, you know, I think you're
2 going down a road here that it's not going anywhere. I
3 mean, you're here to get her opinion.

4 I mean, this is a document that we filed with
5 you to say --

6 MR. BERGMAN: If you have an objection as to
7 form or that it's privileged --

8 MR. OLSEN: All right. Well, if you want to
9 waste time, go ahead.

10 MR. BERGMAN: I don't believe it's a waste of
11 time.

12 THE WITNESS: Be a little more specific in
13 that last question.

14 MR. BERGMAN: Not a problem, I can clarify.

15 THE WITNESS: Thank you.

16 Q. (BY MR. BERGMAN) So looking at paragraph
17 Nos. 2 through 13, you've testified that you have
18 formulated an opinion as to each of those issues?

19 A. Yes.

20 Q. Paragraph Nos. 2 through 13, does anything in
21 there explain or describe the basis of your opinion or
22 the reason of why your opinion is the way it is?

23 MR. OLSEN: Object. Compound. Vague.
24 Ambiguous. A few other things.

25 Q. (BY MR. BERGMAN) If you can answer it...

Lenore Katri 6/14/2012

1 A. There are some things in these paragraphs
2 that, yes, I have a basis.

3 Q. That you do have a basis for?

4 A. Yes.

5 Q. Okay. Now, maybe I've confused you. My
6 question isn't so much whether you have a basis for your
7 opinions.

8 My question is: Do these paragraphs explain
9 what those bases are?

10 A. Yes.

11 Q. And where does it do that?

12 A. In No. 2. There is a duty to follow
13 instructions from all of the parties in the transaction.

14 Q. And why do you believe there's a duty to do
15 that?

16 A. Because you can't take instructions from one
17 party and not the other.

18 Q. And why is that?

19 A. Because you're probably going to have
20 conflicting instructions. And you want to make sure
21 that there is a meeting of the minds between all of the
22 parties in the transaction.

23 Q. So those would be the reasons for the basis of
24 your opinion; correct?

25 A. Um-hmm.

1 Q. Are those things in here in paragraph No. 2?

2 A. Well, "follow instructions," we have an
3 obligation to -- I mean --

4 Q. Well, it's --

5 A. I don't understand where you're trying to get
6 to.

7 Q. My question is: You know, when you say
8 there's a duty to follow instructions and obligations of
9 the written closing and escrow agreement, is that what
10 you're saying is your opinion that you formed?

11 A. Yes.

12 Q. Now, we just talked about a few things about
13 why your opinion is that opinion.

14 Is any of that "why" included in that
15 paragraph No. 2?

16 I'm not trying to trick you. I'm just --

17 A. Well, I'm not sure --

18 MR. OLSEN: Asked and answered.

19 MR. BERGMAN: No, I don't believe she has
20 answered.

21 Q. (BY MR. BERGMAN) Well, let's go back.

22 So you said that you want to get with the
23 parties to make sure that you don't get conflicting
24 instructions; correct?

25 A. Correct.

Lenore Katri 6/14/2012

1 Q. Is that in No. 2?

2 A. Yes. There's a duty to follow instructions
3 and obligations in the written and closing and escrow
4 agreement.

5 Q. But is there anything explaining how you need
6 to correspond with both parties to make sure you avoid
7 conflicting instructions?

8 A. In this paragraph?

9 Q. Yeah.

10 A. No.

11 Q. Now, how else do you know there's a duty to
12 follow the instructions and obligations of the written
13 closing and escrow agreement?

14 A. Because that's what the duty of an escrow
15 officer is.

16 Q. And how do you know that that's the duty?

17 A. It's general knowledge of what an escrow
18 officer is.

19 Q. So it's based on your general knowledge and
20 work experience?

21 A. Sure.

22 Q. Does it state in here in No. 2 that your
23 opinion of Northern Title's duty to follow the
24 instructions of the written closing and escrow agreement
25 are based on your general knowledge and work experience?

1 A. It doesn't say that, no.

2 Q. So that's what I'm asking. I'm asking if
3 these paragraphs explain the basis of the opinion.

4 And so looking at No. 3, "Northern Title's
5 duty to seek the written approval from both parties
6 before changing any of the terms of the contract or
7 deed," now, is it your opinion that that is a duty of
8 Northern Title's?

9 A. Yes.

10 Q. And how do you know that that's a duty of
11 Northern Title's?

12 A. It's a duty of any escrow officer.

13 Q. And how do you know that?

14 A. That's just what an escrow officer does.

15 Q. So that's what you've done in your work
16 experience?

17 A. Yes.

18 Q. And is that what you were trained to do?

19 A. Yes.

20 Q. Does it state in there that, again, you
21 believe that this was Northern Title's duty, due to your
22 work experience?

23 A. Yes.

24 Q. It does state that in there?

25 A. Well, it doesn't state that. But...

Lenore Katri 6/14/2012

1 Q. So it does or it does not?

2 A. It does not state that in there.

3 MR. OLSEN: Well, in that particular
4 paragraph.

5 MR. BERGMAN: I'm going to object. I can't
6 have you coach the witness.

7 MR. OLSEN: I'm not coaching the witness.

8 MR. BERGMAN: You're feeding her an answer.

9 MR. OLSEN: No.

10 MR. BERGMAN: And it's improper.

11 MR. OLSEN: I'm just clarifying the record
12 here.

13 MR. BERGMAN: You're feeding her an answer,
14 and it's improper.

15 MR. OLSEN: No.

16 Q. (BY MR. BERGMAN) So when you look at each of
17 Nos. 2 through 13, are these essentially each stating
18 what your opinion is?

19 Namely so, No. 4 says, "Northern Title's duty
20 to inform the buyer insured of any property contained
21 within the contract legal description that does not
22 belong to the seller or is otherwise encumbered."

23 So is that basically what your opinion is, is
24 that Northern Title has that duty?

25 A. Yes.

Lenore Katri 6/14/2012

1 Q. And looking at number -- I don't want to skip
2 them. I think we'll just have to go through them.

3 No. 5, "Northern Title's duty to record a
4 warranty deed that is consistent with the written
5 purchase agreement," is that your opinion as well that
6 Northern Title has that duty?

7 A. Yes.

8 Q. No. 6, "Northern Title's duty to not modify a
9 warranty deed after it has been recorded without
10 explicit authorization from both buyers and sellers."

11 Your opinion is Northern Title has that duty?

12 A. Yes.

13 Q. No. 7, "That the modifications by Northern
14 Title made to the deed cannot be considered in any way,
15 shape, or form as merely correcting a Scribner's error.

16 Now, you're aware that there were two deeds
17 recorded; correct?

18 A. Yes.

19 Q. So when it's talking about the modification by
20 Northern Title, what is that talking about to you?

21 A. That they made changes to the document
22 regarding the legal description.

23 (Mr. Cummings enters room.)

24 MR. BERGMAN: Okay. And just for the record,
25 can we announce who is --

Lenore Katri 6/14/2012

1 MR. BERGMAN: Oh, you're right. I'm thinking
2 of the realtors. No, I'm glad you caught me on that.

3 MR. FLAIG: You're right.

4 MR. BERGMAN: No, and the rule states that he
5 can be here. So thank you, Nathan.

6 Okay. What number were we on? Do you
7 remember? I don't.

8 Can I have the court reporter tell us which
9 number we were on.

10 THE WITNESS: We were on No. 7.

11 MR. BERGMAN: You're right. We were on No. 7.

12 Q. (BY MR. BERGMAN) So what modification is that
13 talking about to you, or what do you understand that to
14 mean?

15 A. I understand it to mean that there was a
16 change in the legal description on the property.

17 Q. And, to your knowledge, is this referring to
18 the change that was made on the second deed?

19 A. Yes.

20 Q. Is it your opinion that the modifications that
21 were made on that second deed by Northern Title made to
22 the deed cannot be considered in any way, shape, or form
23 as merely correcting a Scribner's error?

24 A. Yes.

25 Q. Does it explain there why it could not be

Lenore Katri 6/14/2012

1 considered a Scribner's error?

2 A. It does not.

3 Q. Does it explain any documents that you relied
4 on as to why it could not be explained as a Scribner's
5 error?

6 A. No.

7 Q. Looking at No. 8, "Whether it is appropriate
8 to issue a title policy more than eight months after the
9 transaction has closed, including whether a title
10 company" -- there's a typo here, but "a title company
11 justified in delaying that policy because it claims that
12 it was waiting for instructions from the buyer to deed
13 the property to a trust."

14 Did I read that correctly?

15 A. Yes.

16 Q. Now, it states that there in a form of a
17 question of whether it is appropriate.

18 Have you formed an opinion on that issue?

19 A. No.

20 Q. You have not?

21 A. Hmm-um.

22 Q. Okay. No. 9, "Whether it is appropriate for
23 Northern Title to issue a title policy for a legal
24 description that is different from the title commitment
25 and the purchase and sale agreement and after explicit

Lenore Katri 6/14/2012

1 internal direction to issue the policy according to the
2 contract and title commitment," again, that's stated in
3 the form of a question of whether it is appropriate.

4 Have you formed an opinion as to that issue?

5 A. Yes.

6 Q. And is your opinion essentially that it was
7 not appropriate for Northern Title to issue a title
8 policy for a legal description that is different from a
9 title commitment and a purchase and sale agreement and
10 after explicit internal direction to issue the policy
11 according to the contract and title commitment?

12 A. Yes.

13 Q. Does it say in No. 9 your reasons for why that
14 would be inappropriate?

15 A. No.

16 Q. Does it say in No. 9 the specific documents or
17 information you relied on in forming that opinion?

18 A. No.

19 Q. No. 10, "Northern Title's duty to remain a
20 neutral party as escrow and closing officer and to
21 disclose any actual or perceived conflicts of interest."

22 Is it your opinion that Northern Title has a
23 duty to remain a neutral party as escrow and closing
24 officer and disclose any actual or perceived conflicts
25 of interest?

Lenore Katri 6/14/2012

1 A. Yes.

2 Q. And does it state in No. 10 the reason for why
3 your opinion is that?

4 A. No.

5 Q. Does it state in No. 10 the documents that you
6 relied on --

7 A. No.

8 Q. -- in forming that opinion? Sorry.

9 A. No.

10 Q. This is fun.

11 No. 11, "Northern Title's fiduciary duty
12 toward its insured, in particular after it has become
13 aware of a potential claim."

14 Is it your opinion that Northern Title has a
15 fiduciary duty to its insured, in particular after it
16 has become aware of a potential claim?

17 A. Yes.

18 Q. Does it state in No. 11 the reason for your
19 opinion on that?

20 A. No.

21 Q. Does it state in No. 11 any documents that you
22 relied on in forming your opinion on that?

23 A. No.

24 Q. No. 12, "Northern Title's duty not to delete
25 or destroy records once it has become aware that there

1 is a claim."

2 It is it your opinion that Northern Title had
3 a duty not to delete or destroy records once it has
4 become that there has been a claim?

5 A. Yes.

6 Q. Does it a say in No. 12 the reason of why your
7 opinion is that?

8 A. No.

9 Q. Does it say in No. 12 any documents or
10 specific data that you relied on for that?

11 A. No.

12 Q. No. 13, "Northern Title has a duty to properly
13 respond to and remedy its insured when it has become
14 aware that there's a defect in the property insured."

15 Is it your opinion that Northern Title has a
16 duty to properly respond to and remedy its insured when
17 it has become aware that there is a defect in the
18 property insured?

19 A. Yes.

20 Q. And does it explain in No. 13 the reason why
21 your opinion is that?

22 A. No.

23 Q. And in No. 13, does it explain any specific
24 documents or information you relied on in forming that
25 opinion?

Lenore Katri 6/14/2012

1 A. No.

2 Q. No. 14 is really a catchall.

3 So I'll just ask you: Aside from those issues
4 that we've just read and aside from No. 8 which you said
5 you haven't formed an opinion on, are there any other
6 issues not listed here that you have formed an opinion
7 on?

8 A. No.

9 Q. So these are all of the issues that you have
10 formed an opinion on to this date?

11 A. Yes.

12 Q. Sorry. I know that was tedious.

13 When did you first hear about this real estate
14 transaction between Cummings and Stephens?

15 A. When Mr. Olsen came to my office and asked if
16 I would be a witness.

17 Q. Okay. And when was that?

18 A. I don't recall.

19 Q. Do you think it was --

20 A. Three or four months ago maybe.

21 Q. Okay. So three or four months ago?

22 A. Yeah.

23 Q. Now, obviously, you've spoken with Mr. Olsen
24 about this matter; correct?

25 A. Yes.

1 commitment that was issued in the case or at least that
2 was issued in the relevant time period of the case?

3 A. We haven't really discussed much of it. He
4 gave me copies of documents.

5 Q. Okay. Do you have with you the copies of the
6 documents that he gave you?

7 A. Yes.

8 Q. And so are these the documents that you relied
9 on in forming your opinion?

10 A. Yes.

11 Q. Aside from those documents that you've brought
12 with you, is there anything else that you've relied on
13 in forming your opinion?

14 A. Just the general -- I don't know what you'd
15 say, but generally what an escrow officer does in her
16 closings and what he or she needs to do.

17 Q. And that would be through your 34 years of
18 experience; right?

19 A. Yes.

20 MR. BERGMAN: Can we take a short break?

21 MR. OLSEN: Sure.

22 MR. BERGMAN: Is it all right if I look
23 through these documents and see what we're going to be
24 going through? I just want to see what you've got here.

25 (Off the record.) (Break taken from 10:10

1 a.m. to 10:23 a.m.)

2 Q. (BY MR. BERGMAN) Lenore, have you actually
3 visited the property that's in dispute?

4 A. No.

5 Q. I've just looked through the documents that
6 you brought with you.

7 And you earlier testified that that's all of
8 the documents that you have; correct?

9 A. Yes.

10 Q. I noticed in there that there was a deposition
11 by a Lori Thornock.

12 Did you read through that deposition?

13 A. Very quickly.

14 Q. So not in a detailed kind of sense?

15 A. No.

16 Q. Is it fair to say that most of the facts you
17 obtained from this case have been through Mr. Olsen?

18 A. And the documents.

19 Q. And the documents?

20 A. Yes.

21 Q. Is it fair to say that in learning about the
22 course of how things happened, did you learn a lot of
23 that through Mr. Olsen?

24 A. Mostly through the documents.

25 Q. Mostly through the documents?

Lenore Katri 6/14/2012

1 A. I would say it's a preliminary title report
2 instruction.

3 Q. Okay. So that's your guess of what this is?

4 A. Yes.

5 Q. And behind that document, we have all of these
6 -- kind of a myriad of deeds and copies of deeds.

7 A. Um-hmm.

8 Q. What does that look like to you that they were
9 doing?

10 A. Getting ready to do their title commitment.

11 Q. Okay. And when you say "they," do you mean it
12 looks like Northern Title was getting ready to do their
13 title commitment?

14 A. Yes, their title department.

15 Q. Have you reviewed these documents that are
16 behind this first page?

17 A. No.

18 Q. If you did review them, would you be able to
19 tell whether or not they were properly prepared for
20 making the title commitment?

21 A. Probably not.

22 Q. What would you need to be able to do that, or
23 can you do that?

24 A. Well, I'm not a title officer, so I probably
25 would not be able to do it.

Lenore Katri 6/14/2012

1 that she has relied on. And we'll mark it as exhibit --
2 the last exhibit.

3 MR. OLSEN: Maybe we'll do it -- I think we've
4 discussed before that this whole binder was submitted.

5 MR. BERGMAN: Right. I know it has been
6 submitted. But I aim to be able to look back and see
7 what we're talking about in this deposition.

8 MR. OLSEN: All right.

9 MR. FLAIG: Don't you want that other
10 loose-leaf stuff too?

11 MR. BERGMAN: Yeah, the whole thing. I'll
12 have this No. 3 and then this loose-leaf stuff be No. 4.

13 MR. OLSEN: Okay.

14 Q. (BY MR. BERGMAN) So the stuff that we're
15 going to be marking as No. 4, you received before?

16 A. This?

17 Q. Yes.

18 A. Yes.

19 Q. So, just for the record, the documents that
20 you received earlier, when did you receive these, do you
21 know?

22 A. Maybe 30 days ago.

23 Q. Okay. So about a month ago.

24 And then this binder that will be marked as
25 Exhibit No. 3 you received last Tuesday?

Lenore Katri 6/14/2012

1 description.

2 Q. Now, when you say "the differences in the
3 legal description," are you talking about the two deeds
4 that were recorded?

5 A. And the legal that was attached to the real
6 estate purchase agreement.

7 Q. So the pertinent things there were the
8 differences in the legal descriptions of the recorded
9 deeds?

10 A. Yes.

11 Q. And the difference in the legal description of
12 real estate purchase contract?

13 A. Yes.

14 Q. Were there any other documents that you relied
15 on in formulating that opinion?

16 A. The title commitments.

17 Q. Anything else?

18 A. No.

19 Q. Now, when you say Northern Title has a duty to
20 complete the transaction, is that referring to their
21 duties as escrow or duties as insurer that you formed
22 your opinion?

23 A. Both.

24 Q. Both?

25 A. Yes.

Lenore Katri 6/14/2012

1 Q. There's one more factor here where it says,
2 "After explicit internal direction to issue the policy
3 according to contract and title commitment."

4 What do you take that to mean, or how does
5 your opinion relate to that, I should ask?

6 A. Well, are they talking internal of the company
7 itself?

8 Q. I don't know.

9 Do you know?

10 A. No.

11 Q. Have you formed an opinion on that?

12 A. No.

13 Q. Okay. Are you aware of any internal
14 communications in this case that --

15 A. No.

16 Q. Okay. I want to talk to you about an escrow's
17 duty to remain a neutral party.

18 A. Yes.

19 Q. What does that mean by remaining a neutral
20 party? What do you mean that to mean?

21 A. Well, you can't take instructions from this
22 guy over here that contacts this guy over here and
23 expect to have a neutral closing. Everybody has to be
24 in agreement.

25 Q. So by neutral -- go ahead. I'm sorry. I

Lenore Katri 6/14/2012

1 A. Exhibit No. 4 I received first.

2 Q. So Exhibit No. 4 you received first, then you
3 received Exhibit No. 3?

4 A. Yes.

5 Q. Thank you for clarifying.

6 Now as part of No. 4, did you also receive the
7 copy of the deposition on the bottom there that's in a
8 little -- the copy of Lori Thornock's deposition?

9 A. This one came with that one.

10 Q. Okay. So let's make sure we get this correct,
11 and let's put Lori Thornock's deposition with Exhibit
12 No. 3. And that will be reflected here on the record
13 too.

14 So the binder in Lori Thornock's deposition
15 you got on Tuesday?

16 A. Tuesday.

17 Q. And the rest of these documents you got --

18 A. About 30 days ago.

19 Q. -- about 30 days ago.

20 I mean, if it was two months ago, do you think
21 it was up to two months ago?

22 A. I don't think so. I really don't remember.

23 Q. Do you think it was up to three months ago?

24 A. No.

25 Q. So you're certain it wasn't three months ago?

Lenore Katri 6/14/2012

1 A. I'm pretty sure, yeah.

2 Q. And you're relatively sure it wasn't two
3 months ago?

4 A. Pretty sure.

5 Q. So your best estimate is 30 days?

6 A. Somewhere between 30 and 60 days.

7 Q. All right. Do you have any documents on how
8 did you receive these? Did you receive these by mail?

9 A. No.

10 Q. How did you get them?

11 A. He dropped them by.

12 Q. So Mr. Olsen dropped them by?

13 A. Um-hmm.

14 Q. Do you have anything documenting Mr. Olsen
15 dropping these by?

16 A. No.

17 Q. Lastly, tell me if I'm correct here, but the
18 main documents that we've gone over today have been the
19 title commitments?

20 A. Yes.

21 Q. The real estate purchase contract? The escrow
22 provisions?

23 A. Yes.

24 Q. And the deeds --

25 A. Yes.

Lenore Katri 6/14/2012

1 you've been employed in the past; correct?

2 A. Correct.

3 Q. What sorts of training in Idaho law regarding
4 title officer duties, procedures, and standards have you
5 received?

6 A. Title officer?

7 Q. Yeah. If you were a title officer, you get
8 certain training on the laws of Idaho and procedures and
9 duties and that sort of thing.

10 What specific training have you had in that?

11 A. Well, I'm not a title officer, so I wouldn't
12 do any training on title officer.

13 Q. Okay. And just one other thing too.

14 You mentioned that case that you were involved
15 in the past. I don't know how to say it.

16 A. Rencher.

17 Q. When was that? What year?

18 A. I don't remember.

19 Q. Ten years ago, did you say?

20 A. Yeah, somewhere around there.

21 Q. Was that in Idaho?

22 A. Yes.

23 Q. And what was it about?

24 A. Some personal property that the buyer claimed
25 that he was to receive in the transaction, and the

Lenore Katri 6/14/2012

1 A. Yes, they should.

2 MR. OLSEN: That's all I have.

3 MR. BERGMAN: I just have a few followup
4 questions.

5 FURTHER EXAMINATION

6 BY MR. BERGMAN:

7 Q. Ms. Katri, you testified that you are familiar
8 with the laws and regulations governing escrow officers;
9 correct?

10 A. Yes.

11 Q. Are you also just as familiar with the laws
12 and regulations governing title officers?

13 A. Probably not as much.

14 Q. And why not?

15 A. Because I'm an escrow officer, not a title
16 officer.

17 Q. Can you point to any specific laws that you've
18 relied on in forming your opinions today?

19 A. Like in a law book?

20 Q. Um-hmm.

21 A. No.

22 Q. Have you made an effort to do so up until this
23 point?

24 A. No.

25 Q. Looking at Lori Thornock's affidavit and

Lenore Katri 6/14/2012

REPORTER'S CERTIFICATE

I, TIFFANY Z. FISHER, CSR No. 979, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and transcribed by me or
under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
21st day of June, 2012.

TIFFANY Z. FISHER, RPR, CSR NO. 979

Notary Public

My commission expires September 13, 2016

EXHIBIT "D"

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,)	
Plaintiff,)	
vs.)	Case No. CV-2009-183
ROGER L. STEPHENS, an individual)	
residing in Providence, Utah,)	DEPOSITION OF
NORTHERN TITLE COMPANY OF IDAHO,)	GREGORY KELLEY
INC., and Idaho Corporation, JOHN)	JUNE 14, 2012
DOES I-X,)	
Defendants.)	

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

NT memorandum

1152

Gregory Kelley 6/14/2012

1 the attachment of the amendments and --

2 A. I think there was --

3 Q. Formatting changes?

4 A. -- formatting changes and grammatical changes,
5 just one or two that maybe that were made.

6 MR. BERGMAN: Can we have this marked as
7 Exhibit No. 11.

8 (Deposition Exhibit No. 11 was marked.)

9 Q. (BY MR. BERMAN) Now, do you know what's
10 contained in Exhibit No. 11?

11 A. Yes. It's the body of this report without the
12 information that's in the addendum.

13 Q. Did you provide that to Nathan last night?

14 A. I did.

15 Q. So Exhibit No. 11 isn't your complete report;
16 correct?

17 A. Yes, absent the addendum items, nine maps, and
18 the plats and the photos and all of the addendum items.

19 Q. The addendum items, are those the documents
20 that basically you relied on while you were doing this
21 appraisal?

22 A. Yes.

23 Q. Let's look at the addendums here that you have
24 in Exhibit No. 10. Let's see if we can start at the
25 right place.

Gregory Kelley 6/14/2012

1 attorney, Mr. Olsen.

2 I also to want point out for the record, and
3 Mr. Olsen has done a good job here pointing that out,
4 that this report is being brought in the late hour. But
5 I also want to point out if we're going to point out
6 these things for the record, that I want to point out
7 the fact that we were not provided with Mr. Kelley's
8 report until late yesterday, and even that was simply a
9 draft report.

10 In addition to that, we were given
11 Mr. Kelley's full final report today, the morning of the
12 deposition. Additionally, we had not been provided any
13 documents for Mrs. Katri's deposition which was taken
14 earlier today.

15 And in that light, I think this is a bit of
16 calling the kettle black. But I'll leave it at that.

17 MR. OLSEN: Okay. Well, let me respond to
18 that.

19 And I'll go ahead and mark for the record
20 Exhibit No. 13, which was the Amended Notice of Taking
21 the Deposition of Greg Kelley, which is dated the 8th of
22 May where there is no request that he bring any report.

23 MR. BERGMAN: And that's fine. Those things
24 are required by Rule No. 26 anyway.

25 MR. OLSEN: But I would add there was no

1 information. You went into that detail by detail.

2 So at this point, just about any question that
3 you're asking him has been asked and answered in some
4 form before.

5 MR. FLAIG: I'm sorry. I don't recall that
6 that's necessarily correct. But we're on the record.

7 MR. OLSEN: It's on the record.

8 MR. FLAIG: Sure.

9 MR. BERGMAN: Objection noted.

10 MR. OLSEN: Thank you. I am worried that your
11 court reporter is going to fall asleep on the way to
12 Boise.

13 Q. (BY MR. FLAIG) Turning to page No. 22 of your
14 report, it states on there in the last paragraph, "As
15 requested and consideration has been given to any
16 indication of damages to the land located on the west
17 side of the highway as a result of loss of the land
18 lying east of the highway. I have been unable to find
19 anything in the market as of the effective date of this
20 appraisal that would indicate any such damages."

21 Did I read that correctly?

22 A. Yes.

23 Q. Do you stand by that statement?

24 A. Yes. Anything in the market. It may not
25 speak to a specific buyer, but the market doesn't

Gregory Kelley 6/14/2012

1 recognize anything, any damages there.

2 Q. Okay. All right. Have you had any training
3 writing legal descriptions, official training?

4 A. I've taken courses on them.

5 Q. Have you written them yourself?

6 A. Yeah, I have some.

7 Q. Legal descriptions?

8 A. Simple ones.

9 Q. If something is valued as dry cropland versus
10 irrigated land, does that have an effect on its value?

11 A. Not just clarifying it as such. You'd have to
12 have a -- if you had a developed irrigation system on
13 the property, then it would. Just calling it a
14 different name doesn't change it.

15 MR. FLAIG: I don't have any further
16 questions.

17 MR. OLSEN: I'll take one minute.

18 (Off the record.) (Break taken from to 7:45
19 p.m. to 7:49 p.m.)

20

21 EXAMINATION

22 BY MR. OLSEN:

23 Q. Mr. Kelley, when you're looking at, for
24 instance, the subject property where you've got east
25 side property and west side property, does it make a

Gregory Kelley 6/14/2012

REPORTER'S CERTIFICATE

I, TIFFANY Z. FISHER, CSR No. 979, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and transcribed by me or
under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
21st day of June, 2012.

TIFFANY Z. FISHER, RPR, CSR NO. 979

Notary Public

My commission expires September 13, 2016

EXHIBIT "E"

Aaron Bergman

From: Nathan Olsen <nolsen@pmholaw.com>
Sent: Wednesday, June 13, 2012 4:35 PM
To: 'Aaron Bergman'
Cc: 'Brad Bearnson'; 'Mary Andreasen'
Subject: RE: Kelley & Katri Depositions
Attachments: Cummings Property Montpelier Draft.pdf

Dear Aaron,

If you review the supplemental disclosures of expert witnesses that we timely filed, we provided information for these expert witnesses as required under Rule 26, with the exception of the appraisal, which, until your e-mail yesterday (and no prior such request), we anticipated providing to you at the deposition. After receiving your note, I pressed Mr. Kelley to at least get me an unbound draft of his report that I could send you ahead of time, which is attached. This is the best I could do under such short notice.

Will see you (or Brad) tomorrow,

Nathan

From: Aaron Bergman [<mailto:abergman@bearnsonlaw.com>]
Sent: Tuesday, June 12, 2012 9:02 AM
To: nolsen@pmholaw.com
Cc: Brad Bearnson; Mary Andreasen
Subject: Kelley & Katri Depositions

Nathan:

This email is regarding the upcoming depositions of Mr. Kelley and Mrs. Katri. Thus far, all we have are a supplemental disclosures of witness identification, naming out who these witnesses are and the general topics they are expected to opine on. Prior to the deposition, we would like to be able to review these experts' files, such as their reports and the documents relied upon them in formulating their opinions. Without this, preparing fully for their respective depositions becomes hard to do, if not impossible.

As a reminder, this information should have been disclosed earlier pursuant to the *Order Setting Jury Trial*, and Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure. Your prompt assistance on this matter is appreciated.

Sincerely,

Aaron K. Bergman
Attorney at Law

cc: Brad Bearnson; Mary Andreasen



NT Memorandum

399 North Main Street, Suite 270
Logan, Utah 84321
Office: 435.752.6300
Fax: 435.752.6301
Email: abergman@bearnsonlaw.com

NOTE: This e-mail message contains information from Bearnson & Caldwell, LLC which is confidential, legally privileged and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this message in error, please do not forward or use this information in any way, delete it immediately, and contact the sender as soon as possible by the reply option or by telephone at the telephone number listed (if available). Thank you.

NT Memorandum

EXHIBIT "F"

June 1, 2012

Mr. Nathan M. Olsen
Petersen, Moss, Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

**Re: Summary Appraisal Report
Steven B. Cummings Property
Sixth Judicial District Court
Case No.: CV-09-183
368.72 Total Acres of Land & Improvements
2 Miles N. of Montpelier, Bear Lake County, Idaho**

Dear Mr. Olsen:

As requested, I have made a careful personal inspection of the above referenced property located approximately 2 miles north of the City of Montpelier, between Montpelier and the Community of Bennington in north-central Bear Lake County, in the extreme southeast corner of the State of Idaho. The subject consists of land located on both sides of U.S. Highway 30 with the land on the westerly side of the highway being in the record ownership of Steven B. Cummings, while approximately 85 acres on the east side of the highway currently indicated as being in the record ownership of Roger L. Stephens.

I have analyzed the various factors that influence value for the purpose of arriving at a supportable indication and appraisal of the market value of that property. I have used, as my definition of value, for the purpose of this appraisal, that definition which is found in the body of the appraisal report. Based on this definition, the concluded values would be the price that would likely be obtained in the market if this property was placed on the open market and offered for sale, and a typical buyer was found in the marketplace.

As a result of my inspection, study and investigation, it is my opinion that the market value of this property, as of the requested effective date of value in August 2007, is as follows:

NT memorandum

1162

Estimated Value of the Land West of Highway:	\$574,600
Estimated Value of the Improvements:	<u>\$123,000</u>
Estimated Value of the Property West of Highway:	\$697,600

Estimated Value of the Property East of Highway:	<u>\$153,000</u>
_____ Total Estimated Value of the Property	\$850,600

Called:

\$850,000

Eight Hundred Fifty Thousand Dollars

Sincerely,

Gregory G. Kelley, CGA-32
KELLEY REAL ESTATE APPRAISERS, INC.

MT memorandum

1163

TABLE OF CONTENTS

TRANSMITTAL LETTER	
TABLE OF CONTENTS.....	
PURPOSE OF THE APPRAISAL.....	
SCOPE OF THE APPRAISAL.....	
ESTATE TO BE APPRAISED.....	
OWNERSHIP HISTORY.....	
INSPECTION OF THE PROPERTY.....	
EXPOSURE TIME.....	
ASSUMPTIONS AND LIMITING CONDITIONS.....	
DEFINITIONS USED IN THE APPRAISAL.....	
AREA & NEIGHBORHOOD DATA.....	
LEGAL DESCRIPTION.....	
ASSESSED VALUE AND TAXES.....	
ZONING.....	
WATER RIGHTS.....	
DESCRIPTION OF THE PROPERTY.....	
HIGHEST AND BEST USE.....	
ESTIMATE OF VALUE.....	
CERTIFICATION & STATEMENT OF LIMITING CONDITIONS.....	
QUALIFICATIONS OF THE APPRAISER.....	
ADDENDUM	
• Area Map	
• Neighborhood Map	
• Topography Map	
• Aerial Photo	
• Photos of the Property	
• Market Data	
• Legal Documents Provided	

PURPOSE OF THE APPRAISAL:

The purpose of this appraisal is to arrive at an estimate of the fair market value of approximately 368.72 acres of land and improvements located 2 miles north of the City of Montpelier along U.S. Highway 30, in north-central Bear Lake County, Idaho. The property being considered consists of some 283.72 acres of land and improvements located on the westerly side of U.S. Highway 30, with the remaining 85 acres located on the eastern side of the highway. County records indicate the land to the west of the highway is currently in the record ownership of Steven B. Cummings while the land on the east is in the record ownership of Roger L. Stephens, as co-trustee of the Roger L. and Barbara L. Stephens Family Trust.

This appraisal has been requested by Mr. Nathan M. Olsen, an attorney with the firm of Petersen, Moss, Hall & Olsen, in Idaho Falls, Idaho. Mr. Olsen is representing Steven B. Cummings as Plaintiff in a legal action against Roger L. Stephens, Northern Title Company of Idaho, Inc., and John Does I-X, as Defendants. Mr. Olsen is considered to be the client for this appraisal with Mr. Olsen, Mr. Cummings and those associated with them considered to be the intended users of the appraisal. . It is understood that the purpose of this appraisal is to assist the client and intended users in the above-mentioned legal action. *It is to be clearly understood that the use of this appraisal by anyone other than this client and intended users, and for any use other than the stated intended uses, as set forth above, is prohibited* (USPAP Standards Rule 1 - 2(a) and (b)).

SCOPE OF THE APPRAISAL:

In 2007, Mr. Cummings was in the process of acquiring the land being considered in this appraisal from Mr. Stephens. At that time, it was Mr. Cummings understanding and intention to purchase the full 368.72 acres consisting of land lying on both the east and the west sides of Highway 30. Following what Mr. Cummings considered to be the completion of the transaction, he discovered that an amended legal description had subsequently been recorded and attached to the Title Policy issued for the property, and that the new legal description did not include the land located on the eastern side of the highway. *(Please see attached Complaint and related documents found in Addendum Section of this report)*

This appraisal is made to determine the difference in market value of the property in 2007, with and without the inclusion of the land located on the east side of the highway. This appraisal will also attempt to conclude whether there are any damages to the land on the west as a result of the exclusion of the land on the east side of the road.

This appraisal is made in compliance with guidelines found in the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) as well as any additional instructions that may have been issued by the client. The property consists of irrigated cropland, irrigated meadow land and land that does not currently appear to be irrigated that is located on the east side of the highway. In addition, consideration is given to the older improvements found on that portion located on the west side of the highway.

In making an appraisal of the property, an attempt has been made to consider all three recognized approaches to value. These include the Market or Sales Comparison Approach, the Cost Approach and the Income Approach. The application of the Cost Approach has been considered as a result of improvements found on the property. However, it is noted that these improvements are older and offer limited and varying degrees of utility to the property.

It is further noted that the property appears to have been rented for farming purposes, thus creating an income to the property. However, based on the concluded highest and best use of the property, agriculture is concluded to be an interim use of the property with the lease income not considered to be reflective of its potential market value.

As a result of this analysis, the most reliable approach to value is concluded to be the application of the Market or Sales Comparison Approach with consideration of the contribution value of the improvements to the overall property. In applying the Sales Comparison Approach, an attempt was made to find recent sales throughout the immediate influence area of the subject, as well as surrounding areas where sales of similar properties may be found. From these, or other sales of properties of this type, an attempt is then made to conclude a contribution value of those improvements found.

NT Memorandum

1166

In completing this assignment, the subject property, along with the general and specific neighborhood surrounding the subject, has been inspected with photographs taken of the subject. Records of land use and ownership history have been obtained from the Bear Lake County Courthouse. Discussions have also been held with Realtors, other appraisers, buyers and sellers of properties, in an attempt to obtain the best data possible relating to the subject and the sales that have been used for comparison to the subject.

It is to be noted that Idaho is not a disclosure state. Real estate sales and other transactions are not required to be reported and are typically kept confidential by the parties involved. As a result, it is often difficult to obtain sales data on sold properties.

Careful consideration and analysis have also been applied to concluding the Highest and Best Use of the property. A discussion of this analysis is found later in this report.

For the purpose for which this appraisal is made, and as requested by the client, this appraisal is reported using a Summary Appraisal Report format. The approaches to value have been applied to the subject according to the guidelines set forth in Standard 1 of USPAP. The subsequent report, is made as provided for in Standard 2 of USPAP.

Inherent in a summary appraisal report format is the assumption that the client has existing knowledge of various aspects of the subject property as well as the surrounding area. This may include physical features and characteristics of the property, certain demographic information, real estate market trends, etc. With this prior knowledge and understanding, this report, then, does not necessarily contain a full, and in-depth discussion of each of these areas.

It is to be fully understood that, while the report itself does not contain a discussion of all of the analysis that was made, these items have been researched by the appraiser for their potential influence on the subject and each of these items have been considered as part of the appraisal process. As a result, this type of report tends to limit the reliance on the report to the client and the intended users alone and considers anyone else using the report to be an unauthorized or unintended user.

NT memorandum

ESTATE TO BE APPRAISED:

The estate to be appraised is the "fee simple" interest to the property. The term "fee simple" suggests the property is not encumbered by any other interest and is subject only to easements, and recorded rights of way of record, and to the four powers of government. These governmental powers include police power, the right of eminent domain, escheat and the power of taxation.

OWNERSHIP HISTORY:

From a discussion with the client, and from documents provided that are associated with this action, it is noted that title to the land being considered in this appraisal was transferred to Steven B. Cummings of 43 North, 100 East, American Fork, Utah 84003, from Roger L. and Barbara L. Stephens Family Trust, Roger L. Stephens and Barbara L. Stephens, Trustees, of 436 Cobblestone, Providence, Utah 84332, by way of a Warranty Deed dated August 3, 2007, and recorded on August 3, 2007, in Bear Lake County as Instrument # 199030.

Also from documents provided, it is further noted that the same Warranty Deed with the same parties involved was "re-recorded to correct the legal description," on November 8, 2007, and recorded in Bear Lake County as Instrument # 199911. At that time, the correction of the legal description appears to have removed all of the land located east of Highway 30, from the land being transferred in this Warranty Deed. This appears to be the 85 acres of land being considered in this appraisal that currently appears on county records as being in the ownership of the Stephens Family Trust.

Finally, from the same documents provided, it appears as though the sales price paid in this transaction was \$850,000. This reportedly included \$800,000 for the purchase of the real property, together with an additional \$50,000 paid to Three Bar Ranches in order to purchase the rights to an existing purchase contract in force at that time.

INSPECTION OF THE PROPERTY:

For the purpose of this appraisal, the property was inspected by the appraiser on May 4, 2012. Due to wet conditions on the ground at that time, a general overview of the property was made from numerous points along Highway 30 and from the farmstead located near the east center portion of the land on the west side of the Highway. A similar overview was made of that land located east of the Highway.

In addition to this on-site inspection, aerial photos, topographical maps and a general knowledge of the immediate area have all been relied on in completing this appraisal. Photos of the subject property that are used in this report were taken at the time of that inspection.

Access to the interior of the dwelling was not available, however, it was viewed through the windows. The remaining improvements on the property are generally older and appear to provide little, if any, utility to the property.

EXPOSURE TIME:

Exposure time is a fictional period that precedes the effective date of the appraisal. It represents the time required for a specific property to be exposed on the market before it would likely sell at the opinion of value herein concluded.

An exposure time that would likely be in excess of one year, or more, has been concluded for the subject tract. This estimated time is based on average and typical marketing times found in the limited number of comparable sales that have been considered throughout the area and appears to be strongly influenced by the overall economic conditions of the neighborhood, the region and the nation.

The subject property does appear to continue to have some limited appeal that is attributable to its location in somewhat of a recreational area. This component is based on the general and specific location of the property. A stronger recreational or investment aspect for properties of this type and in this area was once enjoyed, largely based on the market activity that was occurring for properties of this type throughout the area. However, such appeal is considered to have diminished significantly over the past three to four years, primarily due to the general national and local economy. As a result, an extended exposure time has been concluded.

ASSUMPTIONS AND LIMITING CONDITIONS:

The opinions of value herein concluded are subject to the following assumptions and limiting conditions:

- An *extraordinary assumption* is made that the subject property does not contain any latent environmental problems or issues that will affect their value. The appraiser found no obvious environmental problems while inspecting the property. However, the appraiser is not an environmental analyst and is not qualified to make such a determination.
- In completing this appraisal, the *extraordinary assumption* is made that the entire property is in the ownership of Mr. Cummings. This in spite of the fact that title to the 85 acres located on the east side of Highway 30 remains in the name of the Stephens Trust.

DEFINITIONS USED IN THE APPRAISAL:

1. ***Market Value:*** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 1. Buyer and seller are typically motivated;
 2. Both parties are well informed or well advised, and acting in what they consider their best interests;
 3. A reasonable time is allowed for exposure in the open market;
 4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
 - 6.
2. ***Highest and Best Use:*** The reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, financially feasible, and that results in the highest value.
3. ***Improvements:*** Buildings or other relatively permanent structures or developments located on, or attached to land.

AREA & NEIGHBORHOOD DATA:

The subject property is found approximately 2 miles north of the City of Montpelier and 1½ miles south of the Community of Bennington, in north-central Bear Lake County, in the extreme southeast corner of the State of Idaho.

Bear Lake County is the southeastern most county in the state, being bordered by Utah on the south and by Wyoming on the east. It is ranked 36th among Idaho counties in population with a 2010 Census population estimate of 5,986 persons. This represents a drop of approximately 6.6% from the 6,411 persons found in the official 2000 Census. The bulk of the population in the county is located within the larger cities of Montpelier, Georgetown, Paris, Bloomington and St. Charles. The community of Paris is the county seat of Bear Lake County.

The county ranks 32nd in overall size among Idaho Counties. It is estimated that approximately 7.4% of the county is water, with several large lakes found within the county. The predominant physical feature of the county is Bear Lake, a 18-miles long lake found in the south half of the county, with half of the lake being located in Idaho, while the south half is in Utah.

The county is bisected in a general northwest to southeast direction by U.S. Highway 30, and in a southwest to northeast direction by U.S. Highway 89. Highway 30 extends in a southeasterly direction from I-15 to the northwest, and on into Wyoming, southward toward Kemmerer. Highway 89 extends northeasterly from Brigham City, Utah, by way of Logan, Utah, and on into western Wyoming, toward Jackson Hole, Wyoming. The subject property is located approximately 2½ miles north from the intersection of Highways 89 and 30, in Montpelier.

Also bisecting the city is a main line of the Union Pacific Railroad. The city once included a terminal for the railroad. However, in 1972, that terminal was moved to Pocatello. A small-craft, county airport is located approximately 2½ miles northeast of Paris.

Service, trade and governmental industries make up the bulk of the employment base of the county. Major employers include Bear Lake Memorial hospital, Bear Lake County School District, Bear Lake County government, and a variety of smaller retail and commercial businesses.

The majority of the land within the county is agricultural in nature with most of the private land being either irrigated cropland, dry cropland or dry pasture land.

The Bear Lake Valley predominates the county. This is a high mountain valley with elevations that range from 5,800 feet to 6200 feet above mean sea level. The average January temperature is 20° while the average July temperature is 65°. The area receives approximately 12 to 13" of precipitation per year with an average snowfall in January of approximately 10".

The city of Paris, located approximately 7 air miles to the southeast from Montpelier, is the county seat of Bear Lake County. Paris included a 2010 population of 513 persons, representing a decrease of 10.9% persons from the 576 persons found in the 2000 Census.

Montpelier is the largest city in the county and included 2010 Census population of 2,597 persons. Similar to the county, this represents a 6.8% decrease in population over the 2,785 persons counted in the 2000 Census. Services within the city include a typical public and commercial services for a small city of this type. Major cities of influence to Montpelier include Pocatello, Idaho to the northwest and Logan, Utah, to the southwest.

LEGAL DESCRIPTION:

According to documents provided, the legal description for the property being considered in this appraisal, is as follows. Please note the exception cited after the first paragraph below. Although I have not attempted to ascertain the exact land that is being excluded, it is understood that this exclusion only pertains to approximately 25 acres of land that, at the time of this transaction, was not in the ownership of Mr. Stephens.

Beginning at the southwest corner of the southeast quarter of the northwest quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho, running thence north 80 rods; thence East 62.5 rods; thence north 80 rods; thence east 257.5 rods, thence south 80 rods; thence west 2530 feet; thence S 15°E 952 feet; thence S 75°30' W 318 feet; thence N 15° W 218 feet; thence S 75°30' W 2764 feet; thence north 164 feet to the Place of Beginning.

Except all of that portion of the following described land lying easterly of U. S. Highway 30.

Commencing at a point 11.16 chains east from the northeast corner of the southeast quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho, running thence east 3.90 chains; thence S 13°45' E 8.87 chains; thence S 75° W 44.63 chains; thence N 89°55' W 13.66 chains; thence N 30°W 6.54 chains; thence N 75°E 52.50 chains to the Place of Beginning.

Beginning at the northwest corner of the southeast quarter of the southwest quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho, running thence East 94.17 chains; thence S 76°15' W 35.30 chains; thence N 9.12 chains; thence N 75°E 52.50 chains to the Place of Beginning.

Commencing at a point 28 rods, more or less, north and 11 rods, more or less, east of the southwest corner of the southwest quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho, running thence northeasterly 69 rods, more or less, to 40 acre line; thence north 99 rods, more or less, to 40 acre line; thence east along said line 80 rods; thence north along 40 acre line 27 rods; thence southwesterly 112 rods and 8 links to the land of George Perkins; thence southwesterly along the line to the Place of Beginning.

Beginning at the southwest corner of the southeast quarter of the northwest quarter of Section 21, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho, and running thence west 1239 feet; thence S 34°W 175 feet; thence S 35°30' E 1494 feet; thence N 75°38'51 feet, more or less, to the west line of U.S. Highway 30 north right-of-way line; thence N 15° W along said right-of-way 888 feet; thence S 75°30' W 318 feet; thence N 15° W 218 feet; thence S 75°30' W 2764 feet; thence north 164 feet to the Place of Beginning.

A perpetual easement or right-way over a strip of land 20 feet in width leading from the county road to the following described real property, the southeast quarter of the northwest quarter of Section 22 in Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho. And running through a part of the southeast quarter of the northeast quarter of Section 21 and the southwest quarter of the northwest quarter of Section 22, Township 12 South, Range 44 East of the Boise Meridian, Bear Lake County, Idaho.

ASSESSED VALUE AND TAXES:

Information obtained from the Bear Lake County Assessor's office indicates the property being considered in this appraisal is currently (2012) being assessed for taxing purposes and taxed, as follows:

Land West of Highway 30:

Parcel # RP12S44E210700

Steven B. Cummings

43 N., 100 E.

American Fork, UT 84003

<u>Classification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Tax</u>
1 - Irrigated Ag.	61.00	34,320	
4 - Meadow	42.00	14,280	
5 - Dry Graze	6.00	1,350	
12 - Rural Res. Tract	1.00	15,840	
34 - Res. Improvements		96,630	
32 - Ag. Improvements		<u>67,020</u>	
	110.00	229,440	<u>\$1,404.64</u>

Parcel # RP12S44E214820

Steven B. Cummings

43 N., 100 E.

American Fork, UT 84003

<u>Classification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Tax</u>
1 - Irrigated Ag.	56.00	42,090	
4 - Meadow	24.00	8,160	
5 - Dry Graze	22.00	4,950	
32 - Ag. Improvements		<u>13,630</u>	
	102.00	68,830	<u>\$320.74</u>

NT Memorandum

1174

Parcel # RP12S44E218100

Steven B. Cummings

43 N., 100 E.

American Fork, UT 84003

<u>Classification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Tax</u>
1 - Irrigated Ag.	57.72	40,030	
4 - Meadow	<u>14.00</u>	<u>1,890</u>	
	71.72	41,920	<u>\$179.06</u>

Land East of Highway 30:

Parcel # RP12S44E210000

Roger L. Stephens, Trustee

436 Cobblestone

Providence, UT 84332

<u>Classification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Tax</u>
1 - Irrigated Ag.	40.00	21,160	
3 - Dry Crop	<u>5.00</u>	<u>640</u>	
	45.00	21,800	<u>\$94.34</u>

Parcel # RP12S44E223000

Roger L. Stephens, Trustee

436 Cobblestone

Providence, UT 84332

<u>Classification</u>	<u>Acreage</u>	<u>Assessed Value</u>	<u>Tax</u>
1 - Irrigated Ag.	40.00	20,410	\$87.88

ZONING:

According to officials from Bear Lake County, the zoning for the subject property is based on its current use. With the property currently being used as agricultural land, it is assumed that it would be zoned for agriculture.

WATER RIGHTS:

According to information cited in the Warranty Deeds previously cited in this report, the transfer of title to the subject land also included one hundred (100) shares of water stock in the Montpelier Irrigation Company and nine hundred (900) shares of water stock in the Bennington Irrigation Company.

NT Memorandum

The land to the east of Highway 30 includes a steeper, general downward slope from east to west with a change in elevation of approximately 250 feet. Because of the degree of slope on this tract, it appears as though it would be much more difficult to irrigate the land. Although the bulk of this tract is classified in county records as being irrigated agricultural land, it's historical use appears to have been more for dry farm or CRP land.

Land Use:

The land on the subject appears to have to historically, and currently, be used for agricultural purposes. Such a use would be consistent with properties located in the immediate vicinity and throughout the general neighborhood of the subject.

Improvements:

The property is improved with a large farmstead which includes a dwelling and a variety of outbuildings and farm related structures that vary in their condition and their utility to the property. The dwelling includes approximately 1,671 square feet with an attached double car garage. There is no basement under the dwelling. It is older and appears to be in fair to average condition. At the time of inspection, it did not appear to have been occupied for a period of time. A small utility shed is located at the back of the dwelling.

Other improvements on the farmstead include a 6,000 sq. ft. hay shed made of steel posts and beams with metal roofing. It is in average condition and does provide utility to the property.

Other improvements on the property include a small, old dwelling that is old and in fair to poor condition; various feed bunks, sheds, loafing sheds, an old milk barn, feed barn, corrals, hay covers and two metal granaries. These farm-related buildings vary in condition with most being old and in fair to poor condition.

Those facilities that do appear to offer the better utility include two additional hay sheds and the two granaries. Many of the remaining buildings appear to provide little utility to the property due to age and condition.

HIGHEST AND BEST USE:

In arriving at an opinion as to the highest and best use of the subject property, consideration has been given to the four factors or use criteria that must be met in order for a use to be concluded as a highest and best use. These factors include:

- physically possible
- financially feasible
- legally permissible
- maximally productive

In completing a highest and best use analysis of the subject, each of the above cited factors has been applied to this property, based on its present use and on any potential or additional uses for which the property may be used. The subject consists primarily of unimproved land with exception of the farmstead that includes a dwelling and miscellaneous farm related buildings that vary widely in age, condition and utility to the property.

The highest and best use of the property will be considered both as vacant land that is available for development to its highest and best use as well as its present use as a large tract of agricultural land that does include the dwelling and its associated farm improvements.

Physically Possible:

The subject is well located along Highway 30 in the Bear Lake Valley of Southeastern Idaho. It is in close proximity to the largest city in the area and is in an area that experiences significant tourist traffic during the vacation season of the year. The property includes good visibility and supports a panoramic view of the surrounding mountain areas. Good year-round access is available to the property from a major highway bisecting the area.

Legally Permissible:

As previously outlined, the zoning requirements in Bear Lake County allow for a variety of uses of properties such as the subject. While its historical use of the subject is for agriculture, it would likely be approved for other types of use should the demand arise.

Financially Feasible:

At the present time, the bulk of the land immediate surrounding the subject is, and historically has been, used exclusively for agricultural purposes. Such is the case around many of the cities located in the higher mountain valleys throughout this and other recreational areas of southeastern Idaho. Around the time of the Cummings purchase of this property and for several years prior to that time, land of this type was being looked at by potential development and investment buyers due to the speculative interests found in many of these areas.

However, in late 2007 and particularly in mid-2008, much of this speculation market experienced a significant downward trend due to the overall economic concerns found throughout the country. This decrease resulted in the loss of most investors, speculators and developers that were once prevalent throughout the mountainous recreational areas of the Intermountain west. This created a lack of demand for properties of this type for most uses other than agriculture.

While the loss of the investor, speculator and developer buyers had a strong impact on prices paid for many types of land throughout the area, relatively strong agricultural commodity markets helped to maintain land values on agricultural land. As a result, properties throughout the area continue to maintain some market demand and reasonable prices. Some of the prices paid continue to recognize some future recreational or developmental influence associated with those properties.

Maximally Productive:

The subject is a moderately sized property that includes tracts of land on both sides of Highway 30. It includes good access and is well located in close proximity to the City of Montpelier. The present and historical use of the property is for agricultural production. During the period of several years prior to the effective date of this appraisal, properties throughout the region that included amenities such as view, proximity to recreational areas, location along tourist corridors, etc., enjoyed increasing land values based on the interest of speculators, investors and developers acquiring similar properties throughout the area.

Since that time, current economic conditions throughout the region seem to have had an effect on the number of sales that have occurred and on the prices paid for investment and speculative properties throughout the area. Much of this is a result of the significant decrease in the number of buyers investing in properties of this type.

Based on the various factors associated with this property, its highest and best use is concluded to be its continued use as agricultural land until such time as the demand for development land in this particular area, increases.

As Improved:

The property is currently improved with an older dwelling, along with numerous agricultural outbuildings that vary widely in age, condition and overall utility to the property. While the dwelling does have utility to the property, it is in need of upgrading and repairs. Agricultural improvements that include the hay covers and granaries that are found on the property also provide utility to the property, while many of the buildings, barns, corrals, etc., are older, in poor condition and provide little, if any utility.

Based on the improvements found, the highest and best use of this property, as improved, is considered to continue to be an agricultural property that includes some future development potential, based on its specific location. During the interim period of use, the dwelling and some of the agricultural outbuildings continue to offer utility to the property although some upgrading of the dwelling is needed in order to enhance the appeal of the improvements.

ESTIMATE OF VALUE:

In arriving at an estimate of value for the subject property, as of the effective date of value in early August 2007, the market has been investigated throughout the general influence area around the subject property to find sales that occurred in close time and location proximity to the subject. While several sales were found to have occurred in close proximity to the subject, few are considered to be similar in character.

Obviously, the sale that offers the best indication of value for the subject was the actual August 2007 sale of the subject property. This sale is outlined as Sale 4 on the summary of sales found on the following page.

Additional sales found in the area are cited on the following chart. These sales range in time from February 2006 to June 2008. They vary widely in their size, between 1,358 acres and 137.00 acres and in the various types of land found on the properties. It is noted approximately half of the buyers were adjacent farmers or tenants who purchased the properties for its continued agricultural use while the other half appear to be investment or speculative buyers from Utah. These buyers reportedly purchased with the intent of a continued ag use of the property until such time as the value of the property increases or until the highest and best use of the property might change to a more profitable use.

From the sales that cited, those considered to be most comparable in overall character to the subject have been adjusted and compared to the subject property. Each type of land has been compare a similar type of land found on the sales with adjustments made for differences found in physical features such as size, location, topography, access and overall utility and appeal.

SUMMARY OF 2006 - 2008 SALES

Elements	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Buyer:	Hawkes	Retreat @ Bear Lake	East Offices LC	Cummings (Subject)	Williamson	McPherson	Weston	Railroad Springs
Sale Date:	Feb. 2006	Mar. 2007	Apr. 2007	Aug. 2007	Sept. 2007	Dec. 2007	Apr. 2008	June 2008
Sales Price:	\$210,000	\$1,600,000	\$1,758,750	\$850,000	\$1,000,000	\$287,700	\$230,000	\$329,000
Total Acreage	220.00	1,358.00	848.14	368.72	750.00	137.00	160.00	450.9
WL/HL Irr. Ag.:	-	-	-	174.72	300	-	-	-
\$ for WL/HL Land:	-	-	-	\$2,500	\$2,000	-	-	-
Irr. Ag w/o equip.:	-	-	-	-	-	-	-	-
\$ for irr. ag w/o eq.:	-	-	-	-	-	-	-	-
Dry Crop Land:	48.00	-	243.4	85.00	-	-	-	450.9
\$ for Dry Crop:	\$700	-	\$2,400	\$1,500	-	-	-	\$725.00
CRP Land:	-	-	-	-	-	-	-	-
\$ for CRP land:	-	-	-	-	-	-	-	-
Irr Pasture:	-	-	-	80.00	-	136.00	160.00	-
\$ for irr. pasture:	-	-	-	\$1,200	-	\$2,050	\$1,438.50	-
Meadow Pasture:	86.00	1,046	326.77	-	-	-	-	-
\$ for meadow:	\$1,000	\$1,335	\$2,400	-	-	-	-	-
Dry Pasture:	85.00	310	276.97	28.00	448.00	-	-	-
\$ for dry pasture	\$700	\$535	\$1,400.66	\$600	\$700	-	-	-
Farmstead Land:	1.00	2.00	1.00	1.00	2	1.00	-	-
\$ for farmstead:	\$1,000	\$1,335	\$2,400	\$2,500	\$2,000	\$2,050	-	-
Waste:	-	-	-	-	-	-	-	-
Improvements:	Old house & outbuildings @ \$55,062	Older house & arena @ \$35,070	-	dwelling/outbldg @ \$122,900 other - \$50,000	dwelling & outbuildings @ \$82,518	Barn & corrals @ \$6,850	-	quonset bldg @ \$2,025
Location:	¼ mi. W of Montpelier	12 mi. sw of Montpelier	5 mi. SE of Soda Springs	Subject	Between Dingle & Pegram	1 mi. sw of Montpelier	west of Dingle	
Topography:	level to undulating	multiple tracts	rolling	2 tracts, rolling hills	moderate to steep slopes	level, bordered by Bear River	rolling	rolling
Accessibility:	co. road	paved roads	gravel co. rd.	highway	Hwy 30	county road	gravel co. road	easement on state & private land
Potential Use:	agriculture	hay/pasture	dry crop / pasture	irrigated & dry farm, ltd. dev. pot.	agriculture	grazing land, ltd. dev. potential	irrig. pasture	dry farm

The various types of land found on the subject include irrigated hay and grain land, irrigated meadow or pasture, some dry graze land that is intermingled with the irrigated land on the west side of the highway and the 85 acres of land considered to be dry cropland located on the east side of the highway.

It is noted that only one other sale, Sale 5, included irrigated cropland. This sale contained some 300 acres that were valued in the sale at \$2,000 per acre. The land on this sale was adjusted for its larger size, and its inferior location. These adjustments offer good support to the indicated value of \$2,500 per acre found in the sale of the subject. Such a value would also include all the land associated with the farmstead found on the property.

The 80 acres classified as irrigated pasture on the subject was compared to the indicated values for similar land found in Sales 6 and 7. Those sales indicate values that range between \$1,438.50 per acre and \$2,050 per acre. Each of the sales included larger tracts, with this class of land being the only land in both of the sales. Allowing adjustments for this factor, together with consideration of location and quality of the land, these sales indicate a value of \$1,500 per acre for this class of land on the subject.

The 28 acres of dry pasture or dry graze land on the subject are again intermingled with other types of land. This has been compared with Sales 1, 2, 3 and 5 which indicate values that range from \$535 per acre to \$1,400 per acre. Adjustments have again been considered for differences in the various physical features of this land compared to that found in the sales. With the subject acreage of this type of land being quite small, and located among the more productive land on the subject, the indicated value of \$600 per acre is considered to offer an indication of its market value.

Finally, the 85 acres of dry farm land located on the east side of Highway 30 has been compared to Sales 1, 3 and 8. Those sales indicate values for this type of land that range from \$700 per acre to \$2,400 per acre. On the subject, this tract is separated from the remainder of the property by the highway. As previously noted, this land is classified by Bear Lake County as irrigated cropland. However, based on its moderately steep to rolling topography, it would be difficult to effectively irrigate this tract, thus resulting it being better suited, at the present time, for use as dry farm land.

NT memorandum

It is noted that, when considering the potential for a change of highest and best use of this property at some point in the future, this tract is considered to have the greater potential for development of some type. This is based on its higher elevation, which enhances its view potential, as well as its smaller size and its good quality highway frontage. Based on this analysis, this tract is considered to have a market value that is based on a per acre value of \$1,800.

Based on this analysis, the land on the subject property is considered to have an estimated value, as of August 2007, as follows:

175.12 Acres Irrigated Cropland @ \$2,500 / Ac.	= \$437,800
80.00 Acres Irrigated Pasture @ \$1,500 / Ac.	= \$120,000
28.00 Acres Dry Graze Land @ \$600 / Ac.	= \$ 16,800
85.00 Acres Dry Cropland @ \$1,800 / Ac.	= <u>\$153,000</u>
Total:	= \$727,600

Estimated Value of the Improvements:

As stated, the improvements found on the subject property include a 40+ year old dwelling with its related improvements, together with several newer hay cover sheds, an older hay shed, two newer granaries, and a variety of feed bunks, corrals, milking parlor, barns and sheds that are all old and have little utility.

In sales of agricultural properties, particularly those that include some future development potential, the value of older improvements that are directly related to the farming operation is generally expressed in a lump sum value that is then added to the land value that has been agreed upon by the parties. This is generally done in order to allow the parties to consider depreciation to those improvements for tax purposes.

Such improvements generally include older dwellings, barns, corrals granaries, equipment sheds, shops, cellars, etc., all similar to those found on the subject.

All of the improvements found on the subject are older and include varying degrees of obsolescence. The dwelling continues to have utility, however, it is in need of maintenance, repair and upgrading. The hay sheds and the granaries are considered to offer the most value relative to the agricultural improvements.

In arriving at an opinion as to a value for the various improvements, consideration has been given to breakouts of values for similar buildings found in the various sales that were considered in this appraisal. These breakouts attempt to assign a value to various buildings similar to those found on the subject. Based on this type of analysis, it is concluded that a lump sum total value for the various buildings, dwellings, outbuildings, etc., found on the subject, is estimated at \$123,000.

Considering the improvements found on the property, together with the land value that has been concluded, an estimated value of the property is concluded, as follows.

Estimated Value of the Land West of Highway:	\$574,600
Estimated Value of the Improvements:	<u>\$123,000</u>
Estimated Value of the Property West of Highway:	\$697,600
Estimated Value of the Property East of Highway:	<u>\$153,000</u>
_____ Total Estimated Value of the Property	\$850,600

Called:

\$850,000

Eight Hundred Fifty Thousand Dollars

As requested, consideration has been given to any indication of damages to the land located on the west side of the highway as a result of the loss of that land lying east of the highway. I have been unable to find anything in the market, as of the effective date of this appraisal, that would indicate any such damages. Based on the highest and best use that was concluded for the subject, I have been unable to determine a need for the land on the east that without it, would have any adverse effect on the operation of the property on the west.

NT Memorandum

1185

CERTIFICATION AND STATEMENT OF LIMITING CONDITIONS

The Appraiser certifies, and agrees that, to the best of his knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analysis, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are the personal, unbiased professional analysis, opinions and conclusions of the appraiser.
3. The Appraiser has no bias with respect to the property that is the subject of this report and no personal interest with respect to the parties involved.
4. The Appraiser has no bias with respect to the property that is the subject of this report or to the parties involved with the assignment.
5. My engagement in this assignment was not contingent upon delivering or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction of value that favors the cause of the client, the amount of the value, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. My analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with the Appraisal Foundation's *Uniform Standards of Professional Appraisal Practice*.
8. I have visited the property that is the subject of this report, specifically for this appraisal, as outlined in the body of the report. In addition, I have observed this property in the past and am familiar with it and its surrounding neighborhood.
9. No one provided significant real property appraisal assistance to the person signing this certification.
10. All conclusions and opinions concerning the real estate that are set forth in this report were prepared by the Appraiser(s), whose signature appears on this report.
11. No change of any item in this report shall be made by anyone other than the Appraiser, and the Appraiser shall have no responsibility for any such unauthorized change.
12. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

CONTINGENT AND LIMITING CONDITIONS: The certification appearing in the report is subject to the following conditions and to such other specific and limiting conditions as are set forth by the Appraiser in the report.

1. The Appraiser assumes no responsibility for matters of a legal nature affecting the property appraised or the title thereto, nor does the Appraiser render any opinion as to the title, which is assumed to be good and marketable. The property is considered as though under responsible ownership.
2. Any sketch or plat map attached may show approximate dimensions and is included to assist the reader in visualizing the property. The Appraiser has not made a survey of the property.

3. The Appraiser is not required to give testimony or appear in court because of having made the appraisal with reference to the property in question, unless arrangements have been previously made therefor.

4. Any distribution of the valuation in the report between land and improvement applies only under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

5. The Appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. The Appraiser assumes no responsibility for such conditions or for engineering which might be required to discover such factors.

6. Information, estimates, and opinions furnished to me and contained in the report were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy of such items furnished can be assumed.

7. The description of the property herein is stated for the purpose of arriving at an opinion of value. It should not be used for any other purpose, such as a description for a prospectus or for describing the property for sale. All parts of this report should only be construed as applying to the opinion of value herein and should not be used separately for specific information.

8. Disclosure of the contents of the report is governed by the Bylaws and Regulations of any professional appraisal organizations in which I hold membership and by USPAP. Such disclosure is restricted to the intended users of the report. No other individual is authorized by the appraiser to use this report.

9. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the Appraiser. The Appraiser has no knowledge of the existence of such materials on or in the property. The Appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

Gregory G. Kelley
Certified General Appraiser
Idaho - #32 * Wyoming - #369

June 1, 2012
Date

NT memorandum

QUALIFICATIONS OF THE APPRAISER

GREGORY G. KELLEY

Idaho Certified General Appraiser: #32
Wyoming Certified General Real Estate Appraiser: #369
Past President, Idaho/Utah Chapter, ASFMRA 2008

GENERAL EDUCATION:

Shelley High School, Shelley, Idaho
Brigham Young University, Provo, Utah
Utah Technical College, Provo, Utah

WORK HISTORY:

Construction Coordinator, Three Fountains of Idaho Falls - 1976-1978
Self Employed; Building Contractor - 1977-1980
Administrator; OHC Dental Group - 1980-1985
Appraiser - Kelley Real Estate Appraisers, Inc. - 1985-Present

APPRAISAL EDUCATION & TRAINING:

Residential Appraisal Course; EIVTS, Idaho Falls 1977
Report Writing Seminar; Bozeman, Montana ASFMRA 1985
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-1
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-2
Right-of-Way Training; Idaho Transportation Dept. Boise, Idaho - 1986
Mathematics of Finance Seminar, Twin Falls, ID ASFMRA 1988
Appraisal Course; Phoenix, Arizona, ASFMRA # A-20, 1988
Sales Analysis Seminar, Idaho Falls, ID ASFMRA, 1989
Standards of Professional Practice & Ethics, AIREA, Boise, Idaho 1990
Appraisal Course: Wichita, Kansas, ASFMRA # A-30, 1991
Certification School, Burley, ID, ASFMRA, # A-45, April 1991
Idaho Certified General Appraiser Exam, CGA # 32, June 1991
Highest and Best Use Seminar; Boise, Idaho, ASFMRA, January 1993
FIRREA Update - August 1994, Various Appraisal Seminars
Standards & Ethics, ASFMRA, Jackpot, NV, May 95
Rural Residential Appraisal Seminar, Jackpot, NV ASFMRA, May 1997
Conservation Easement Seminar, Denver, CO, ASFMRA, November 1998
Federal Land Exchange & Acquisition, Nashville, TN, ASFMRA, November 2000
Income Approach, Discounting & Leasing, Jackpot, NV ASFMRA, May 2003
Appraising Land in Transition Seminar, Jackpot NV ASFMRA, May 2004
USPAP Update Course, Idaho Falls, ID ASFMRA, January 2005
Water Rights Seminar, Idaho Falls, ID; ID/UT Chapter ASFMRA, January 2005
Livestock Ranch Appraisal Seminar, Jackpot, NV ASFMRA, May 2005
Various Current Appraisal Topic Seminar, Boise, ID; ID/UT ASFMRA, January 2006
USPAP Update Course, Twin Falls, ID ASFMRA, January 2006

Code of Ethics, Twin Falls, ID ASFMRA, January 2006
 Understanding Conservation Easements, Atlanta, GA ASFMRA, February 2007
 Government Appraisal Seminar, Atlanta, GA ASFMRA, February 2007
 Recreational Properties Seminar, Atlanta, GA ASFMRA, February 2007
 2008 Appraisal Requirements, Atlanta, GA ASFMRA, February 2007
 Understanding the Next Farm Bill, Atlanta, GA ASFMRA, February 2007
 Mining Seminar, Jackpot, NV ASFMRA, May 2007
 Timber Seminar, Jackpot, NV ASFMRA, May 2007
 Yellow Book Seminar, Boise, ID Appraisal Institute, October 2007
 1031 Exchange Seminar, Salt Lake City, UT, Realtors Land Institute, January 2008
 Data Analysis Seminar, Jackpot, NV ASFMRA, May 2008
 Cost Estimating Seminar, Jackpot, NV ASFMRA, May 2008
 USPAP Update Course, Idaho Falls, ID; ASFMRA, January 2009
 Various Current Appraisal Topic Seminar, Idaho Falls, ID; ASFMRA, January 2009
 Wind Power & Conservation Easement Seminars, Boise, ID; ASFMRA, January 2010
 USPAP Update Course, Las Vegas, NV; Appraisal Institute, January 2011
 Appraisal of Nursing Home Facilities; On-line Course; Appraisal Institute, April 2011
 USPAP Update Course, Logan, UT; ASFMRA, January 2012

APPRAISAL ASSIGNMENTS INCLUDE THE FOLLOWING CLIENTS:

Attorneys	Major Lending Institutions
Accountants	Transfer Companies
Major Oil Companies	The Nature Conservancy
City of Idaho Falls	City of Pocatello
City of Driggs	Idaho Dept of Fish & Game
Idaho State Land Dept.	Idaho Transportation Dept.
Bureau of Land Management	Bureau of Reclamation
Internal Revenue Service	Small Business Administration
U.S. Forest Service	Farmers Home Administration
F.D.I.C.	Resolution Trust Corporation
U.S. Army Corps of Engineers	Utah Power and Light
Banks and Insurance Companies	Idaho Dept. Parks & Recreation
Teton Regional Land Trust	Union Pacific Railroad
Various other government agencies, companies and individuals	

ADDENDUM

- AREA MAP
- NEIGHBORHOOD MAP
- PLAT MAP
- AERIAL PHOTO
- PHOTOS OF THE SUBJECT
- MARKET DATA MAP
- LEGAL DOCUMENTS PROVIDED

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

Attorneys for Plaintiff, Steven B. Cummings

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL -3 PM 2: 57

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO:

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

PLAINTIFF'S MOTION FOR LEAVE
TO AMEND COMPLAINT TO ALLEGE
PUNITIVE DAMAGES

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in
Georgetown, Idaho, EXIT REALTY OF

1 | Plaintiff's Motion for Leave to Amend Complaint to
Allege Punitive Damages

BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff (Cummings), by and through counsel of record, Nathan M. Olsen of PETERSEN MOSS HALL & OLSEN, and pursuant to I.C. 6-1604, respectfully moves this Court for leave to amend his Complaint in this action to allege a claim for punitive damages and prays for relief from this Court in the form of punitive damages against the Defendant, Northern Title. This motion is supported by the memorandum filed contemporaneously herewith and the pleadings and affidavits previously filed, including the Affidavit of Nathan M. Olsen filed with this motion.

DATED this 3 day of July, 2012.

PETERSEN MOSS HALL & OLSEN


Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 3 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

Method of Service:

() mail () hand ☒ fax () email

Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

() mail () hand ☒ fax () email

Attorneys for Northern Title Company

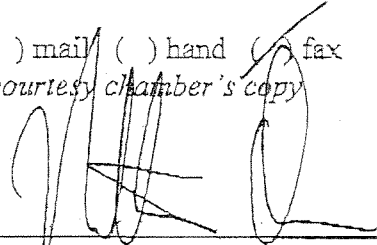
~~Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com~~

~~() mail () hand ☒ fax () email~~

~~*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*~~

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand ☒ fax
courtesy chamber's copy


Nathan M. Olsen

3 | Plaintiff's Motion for Leave to Amend Complaint to
Allege Punitive Damages

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL -3 PM 2:57

KERRY SADDUCK, CLERK

DEPUTY _____ CASE NO. _____

Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

AFFIDAVIT OF NATHAN M. OLSEN
IN SUPPORT OF PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT TO ALLEGE PUNITIVE
DAMAGES

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in

1 | Affidavit of Nathan M. Olsen in Support of Plaintiff's
Motion for Leave to Amend Complaint to Allege Punitive
Damages

Georgetown, Idaho, EXIT REALTY OF
BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss.
County of Bonneville)

I, **Nathan M. Olsen**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

1. Attached as Exhibit 1 is a true and correct copy of an e-mail dated June 13, 2008 sent from Lori Thornock to Jay Davis, which Plaintiff received in responses to discovery.

2. Attached as Exhibit 2 is a true and correct copy of an e-mail dated June 18, 2008 sent from Jay Davis to Lori Thornock which Plaintiff received in response to discovery.

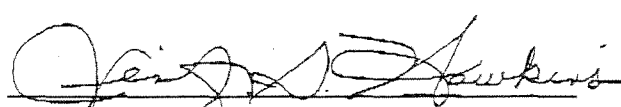
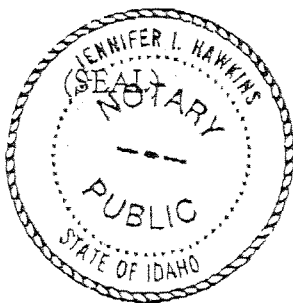
3. Attached as Exhibit 3 is a true and correct copy of pages 133-136 of Lori Thornock's deposition.

4. Attached as Exhibit 4 is a true and correct copy of pages 161 and 162 of Lenore Kari's deposition.

FURTHER affiant saith naught.

DATED this 3 day of July, 2012.

2 | Affidavit of Nathan M. Olsen in Support of Plaintiff's
Motion for Leave to Amend Complaint to Allege Punitive
Damages


Nathan M. OlsenSUBSCRIBED AND SWORN to before me this 3rd day of July, 2012.
Notary Public for State of IdahoResiding at: Bozeman, IdahoMy Commission Expires: 06-27-2018

3 | Affidavit of Nathan M. Olsen in Support of Plaintiff's
Motion for Leave to Amend Complaint to Allege Punitive
Damages

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 3 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

~~Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com~~

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

Method of Service:

() mail () hand ☒ fax () email

Attorneys for Roger L. Stephens

() mail () hand ☒ fax () email

Attorneys for Northern Title Company

~~() mail () hand ☒ fax () email~~

~~*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*~~

() mail () hand ☒ fax
courtesy chamber's copy


Nathan M. Olsen

Lori

From: Lori [lorit@northerntitle.net]
Sent: Friday, June 13, 2008 9:38 AM
To: 'Jay Davis'; 'Paul Davis'
Subject: CUMMINGS
Attachments: 51d3d246.pdf

Attached is what Ryan Olsen the broker has sent to us, what he received regarding Mr. Cummings claims.

Mr. Cummings attorney has now notified the realtors on this Ranch transaction that we insured. So now he has sent letters to , the seller, the realtors and Northern Title.

The broker Ryan Olsen wants to know if we can collaborate on this matter and work together. I told him I would need to see what the correct procedure is but that we would definitely be willing to cooperate in this matter.

Please advise.

Lori Thornock

lorit@northerntitle.net
NORTHERN TITLE COMPANY
660 North 4th Street, Ste. 1
Montpelier, Idaho 83254
208-847-2567
208-847-0881-FAX

From: Ryan Olsen [mailto:ryanolsen@gmail.com]
Sent: Friday, June 13, 2008 9:18 AM
To: Evan Skinner
Cc: lorit@northerntitle.net
Subject: Fwd: eFax from 2087664073 - 23 page(s)

----- Forwarded message -----

From: eFax <message@inbound.efax.com>
Date: Jun 12, 2008 7:56 PM
Subject: eFax from 2087664073 - 23 page(s)
To: ryanolsen@gmail.com

☒ eFax

☒



Fax Message

Home Contact Login

You have received a 23 page fax at 2008-06-13 01:56:34 GMT.

* The reference number for this fax is lax2_did12-1213321567-4355141796-45.

© 2007 J2 Global Communications, Inc. All rights reserved.

eFax® is a registered trademark of J2 Global Communications, Inc.

Atfd N. Olsen

6/16/2008

1198

NOR0114

Lori

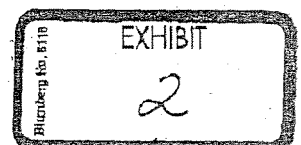
From: Jay Davis [jay@northerntitle.net]
Sent: Wednesday, June 18, 2008 4:45 AM
To: 'Lori'; 'Paul Davis'
Subject: Cummings letter
Attachments: Cummings letter.doc

Lori,
Attached is a letter responding to the claims made by Steven Cummings.
I need:

1. A signed copy of Addendum #3.... this is the most important because without I don't see that have anything in writing from Mr. Cummings to change the legal from the way it was attached to the REPC.
2. An affidavit signed by the realtors that they made it clear to mr. cummings that he wasn't to receive any property east of highway 30.

Please review the letter and let know if I need to change anything.... I'd love to attach executed copies of both of the above listed items.

Thanks
J



Affid N. Olsen
6/18/2008

1199

NOR0117

1 Q. So when the concerns came in from
2 Mr. Cummings through Mr. Budge and also through a letter
3 that was delivered to your office, what did you do at
4 that point to respond to those concerns?

5 A. I would have scanned the letter to my e-mail
6 and e-mailed it to the Davis brothers.

7 Q. And did they call you back and discuss it
8 with you?

9 A. Yes, or e-mailed.

10 Q. There were some e-mails that went back and
11 forth between you and the Davises?

12 A. Yes.

13 Q. I guess if you turn the page to 39, Bates
14 No. 39, is that one of the e-mails?

15 A. Yes.

16 Q. Were there any other e-mail besides this one?

17 A. Yes.

18 Q. Because I couldn't find any others besides
19 this one. Would you have kept those e-mails?

20 A. No.

21 Q. Why not?

22 A. Because I seldom ever printed an e-mail
23 unless it was a letter to instruction.

24 Q. So you are telling me that there were e-mails
25 exchanged between you and the Davises about concerns with

133

1 Q. (BY MR. OLSEN) It is a yes or no question.

2 A. No, it's not the policy.

3 Q. Then why did you delete the e-mails?

4 A. They were part of a file.

5 Q. So you don't think that e-mail or e-mails
6 going back and forth between you and your superiors with
7 regard to a disputed transaction are part of the file?
8 Is that your testimony?

9 A. Not part of an escrow file. I didn't have a
10 separate file.

11 Q. Is Mr. Cummings, he is a customer of Northern
12 Title, correct?

13 A. Yes.

14 Q. And you handled his closing, correct?

15 A. I prepared it.

16 Q. And Northern Title is the one who prepared
17 the title policy with regard to the Cummings transaction,
18 correct?

19 A. Yes.

20 Q. And when there were questions or concerns
21 raised by Mr. Cummings with regard to that transaction,
22 and those were discussed by e-mail with your superiors,
23 that's not part of the file? That's not part of
24 Mr. Cummings' file; is that correct?

25 A. Yes.

135

1 this transaction and you didn't save those e-mails?

2 A. No.

3 Q. Were they deleted?

4 A. They probably went into the -- after so long,
5 I delete every six months.

6 Q. Is that the practice of Northern Title to
7 just delete e-mails and electronic records when there's a
8 known dispute?

9 MR. BEARNSON: Objection. This isn't a
10 30(b)(6) witness. She can testify about her own
11 knowledge.

12 MR. OLSEN: Well, she is a manager.

13 MR. BEARNSON: Manager of the Montpelier
14 office.

15 Q. (BY MR. OLSEN) From your experience as
16 manager and the many years that you have worked for
17 Northern Title, is it the policy of Northern Title to
18 delete documents?

19 MR. BEARNSON: Objection. Foundation.

20 Q. (BY MR. OLSEN) Is it the policy of Northern
21 Title, from your perspective as manager and employee, to
22 delete communications involving a disputed transaction?

23 MR. BEARNSON: Objection. Foundation.

24 THE WITNESS: I guess I don't quite
25 understand the question, because it's not a yes and no.

1 Q. Let's turn to Bates No. 40. Does this look
2 familiar to you?

3 (Witness reviewed exhibit.)

4 A. Yes.

5 Q. What is it?

6 A. It is a letter from Mr. Budge to me.

7 Q. This is an e-mail and what is the date of
8 that e-mail?

9 A. June 10th, 2008.

10 Q. If we looked at the text of that e-mail --
11 do you remember receiving this e-mail?

12 A. Vaguely, yes.

13 Q. It says, "Lori: Thanks much! I also
14 appreciated visiting with you today and clarifying the
15 circumstances surrounding the recording of the amended
16 warranty deed."

17 So that's Mr. Budge's -- part of Mr. Budge's
18 e-mail to you?

19 A. Yes.

20 Q. So did you have a visit with Mr. Budge about,
21 quote, unquote, clarifying the circumstances surrounding
22 the recording of the amended warranty deed?

23 A. Yes.

24 Q. So your testimony earlier that you just sent
25 him the warranty deed was more than that, correct?

EXHIBIT

3

THIS IS A SCANNED COPY

Lenore Katri 6/14/2012

1 title company that you're obligated to issue a title
2 policy in accordance with the commitment that was
3 reviewed by the parties?

4 MR. BERGMAN: Objection. Calls for a legal
5 conclusion. The document speaks for itself.

6 Q. (BY MR. OLSEN) You can answer it.

7 A. I would say yes.

8 Q. In all of your experience, both with what
9 you've experienced and what you've heard, have you ever
10 heard of a title policy containing a different legal
11 description than what was in the title commitment that
12 was not agreed upon by the parties?

13 A. No.

14 Q. And would you say that that's a failure of
15 their duty under the agreement?

16 MR. BERGMAN: Objection. Same objection as
17 before. Calls for a legal conclusion.

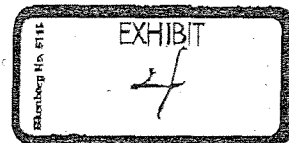
18 You can go ahead.

19 THE WITNESS: Yes.

20 Q. (BY MR. OLSEN) Would you consider the conduct
21 of Northern Title in this case to be an extreme
22 deviation from the normal standards of a title and
23 escrow agency?

24 A. Yes.

25 Q. And why is that?



Lenore Katri 6/14/2012

1 A. Because they didn't get written instructions
2 for any changes to the original contract.

3 Q. And is there any other conduct, too, by
4 Northern Title that you can think of at this time that
5 would be considered extreme deviation?

6 A. It appears that they didn't respond to the
7 purchaser to try and work out a solution to the problem.

8 Q. And that's a good point. I'm glad you brought
9 that up because there is some discussion in your
10 testimony today about the importance of neutrality and
11 avoiding conflicts of interest.

12 Is it appropriate when a claim comes in with
13 regard to the transaction that you've closed that you've
14 acted as a neutral party to take one side of the issue?

15 A. No.

16 Q. Is it appropriate to actively collaborate with
17 one side in your defense?

18 A. No.

19 Q. Do you think it's even appropriate to
20 indemnify the side that's not your insured?

21 A. No.

22 Q. Now, in No. 13, we're back to this disclosure
23 statement, and I think there was some confusion with
24 this one. But let's just read this again.

25 "This is Northern Title's duty to properly

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL -3 PM 2:57

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR LEAVE
TO AMEND COMPLAINT TO ALLEGE
PUNITIVE DAMAGES

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in
Georgetown, Idaho, EXIT REALTY OF

1 | Plaintiff's Memorandum in Support of Motion for Leave to
Amend Complaint to Allege Punitive Damages

BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff (Cummings) offers the following memorandum in support of his motion for leave to amend to allege punitive damages. This memorandum is supported by the pleadings and affidavits previously filed in this case as well as the Affidavit of Counsel submitted herewith.

MATERIAL FACTS

LEGAL STANDARD

Pursuant to I.C. 6-1604(2), the threshold for granting a motion to amend a complaint to add a punitive damages claim is where the Court "after weighing the evidence presented, the court concludes that, the moving party has established at (a) hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." *Id.* 6-1604(2). Of note, the standard for amending the complaint is lower than the standard that the plaintiff must meet at trial to recover punitive damages, requiring "clear and convincing evidence, (of) oppressive, fraudulent, malicious or outrageous conduct." *Id.* at (1). Idaho courts have confirmed that the burden to amend pleadings for punitive damages is a preponderance standard as opposed to the clear and convincing standard. *Myers v. Workmen's Auto. Ins. Co.*, 140 Idaho 495, 501, 95 P.3d 977 (2004).

In Idaho, an award of punitive damages is warranted where there is :

an extreme deviation from reasonable standards of conduct, and that the act was performed by the defendant with an understanding of or disregard of its likely consequences. The justification for punitive damages must be that the defendant acted with an extremely harmful state of mind, whether that be termed malice, oppression,

fraud, or gross negligence; malice, oppression, wantonness; or simply deliberate or willful.

Kuhn v. Coldwell Banker Landmark, Inc., 150 Idaho 240, 254 (Idaho 2010)(citations omitted).

The courts have also provided guidance as to what constitutes punitive damages in a contractual relationship.

The award of punitive damages in the context of a contractual relationship seems to be based on conduct which is unreasonable and irrational in the business context. The act shows a lack of professional regard for the consequence of the breach of the contractual agreement. When parties enter into a contract, they assume not only the contractual duties imposed by their agreement, they assume a duty to act in good faith. If a party breaches its duty to act in good faith, it may be liable for not only the usual damages resulting from the breach, but also punitive damages.

Cuddy Mountain Concrete, Inc. V. Citadel Constr. Inc., 121 Idaho 220, 824 P.2d 151, 169-61 (Ct. App. 1992).

In addition, the courts have "long allowed" a punitive damages claim in situations where there is a "fiduciary duty" by a party such as an insurer that has acted in "bad faith." *Hall v. Farmers Alliance Mut. Ins. Co.*, 179 P.3d 276 (Idaho 2008); *See also, Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 45 P.3d 829 (Idaho 2002); *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211 (Idaho 1996); *Myers v. Workmen's Auto Insurance Co.*, 140 Idaho 495, 95 P.3d 977 (Idaho 2004). These decisions point out that there may be "numerous situations arise where the breaking of a promise may be an extreme deviation from standards of reasonable conduct, and, when done with knowledge of its likely effects, may be grounds for an award of punitive damages." *Id.* (citations omitted.)

The Court should further consider the following factors when deciding whether to allow the question of punitive damages to go to the jury:

- (1) The presence of expert testimony;

- (2) Whether the unreasonable conduct actually caused harm to the plaintiff;
- (3) Whether there is a special relationship between the parties, as in a insured-insurer relationship;
- (4) Proof of a continuing course of oppressive conduct, and
- (5) Proof of the actor's knowledge of the likely consequences of the conduct.

Cheney v. Palos Verdes Inv. Corp. 104 Idaho 897, 665 P.2d 661 (1983).

Additionally, nothing prevents the Court from "reserving the final decision on submitting the issues of punitive damages to the jury" until after the Court is satisfied that the plaintiff has presented sufficient evidence in the record to proceed with a cause of action for punitive damages in front of the jury. *Myers*, 140 Idaho at 502, 95 P.3d at 977.

ARGUMENT

According to the legal standards set forth above, there is now an abundance of evidence before the Court that there is at least a reasonable likelihood that Cummings can at trial meet the burden of proof necessary to warrant punitive damages against the Defendant, Northern Title. As has been previously established, as Escrow Agent and Title Insurer, Northern Title has both contractual and fiduciary duties toward its insured and customer, Cummings. (See pleadings re: *Cummings Motion for Partial Summary Judgment against Defendant Northern Title*.) Within that fiduciary and contractual role, Northern Title has committed a combination of acts from the very beginning of its relationship with Cummings until now that taken together constitute "bad faith," an "extreme deviation from the standard of conduct," "gross negligence," and/or "deliberate or willful conduct," all with a complete "disregard of its likely consequences" that constitute "harmful state of mind" warranting punitive damages.

The cumulation of wrongs and consistent pattern of bad faith committed by Northern Title in that regard, over the last five years that will be presented at trial, has been staggering, including the following:

1. Prior to closing the transaction, Northern Title made changes to the deed different than what was in the purchase contract, without any written instruction, and without seeking approval from Cummings – a violation of the written escrow agreement and statutory and common law. (See pleadings supporting *Cummings Motion for Summary Judgment*.)
2. After closing, Northern Title again made changes to the deed that removed 83 acres from Cummings, contrary to what was in the written purchase agreement, and the title commitment, again without his knowledge or approval, and recorded a new deed without obtaining original signatures. (*Id.*)
3. Notwithstanding its strict duty to be a “neutral party” and act only upon instruction from both sides, Northern Title received and acted on instruction by only one side of the transaction, the seller, Mr. Stephens. After the transaction had been closed and funds disbursed, Northern Title unilaterally acted on Mr. Stephens’ claim that the sale included only the west side of the highway, even though this was directly contrary to what was in the written purchase agreement and title commitment. (*Id.*)
4. Even after recording the new deed, Northern Title did not notify Cummings in writing or verbally that it had made the changes. In fact, at no point did Northern Title ever contact Cummings to determine what he understood the contract to be, even though it had direct contact with Cummings with regard to this transaction. (*Id.*)
5. Northern Title delayed over eight months in issuing the Title Policy, which was different than what was in the title commitment and written contract, and what they had agreed to in the escrow agreement. Moreover, the Title Policy was issued contrary to Northern Title’s internal instruction from its title officer indicating that it be issued in accordance with the “original” title commitment and purchase and sale agreement. (*Id.*)
6. After Northern Title became aware of a potential claim against the seller, Stephens, to enforce the original Warranty Deed, again, rather than maintain any sense of neutrality, Northern Title sprung into action to try and protect Stephens. (*Id.*)
7. Rather than respond to Cummings’ claims, Northern Title instead contacted Stephens’ attorney and Stephens’ agents, the realtors, with the express intent to

"collaborate" their efforts to protect Stephens. Northern Title obtained "statements" from the realtors as well as information directly from the realtor's file. (*Id.* See also Exh. 1 to *Olsen Aff.*, June 13, 2008, *E-mail*)

9. Northern Title President, Jay Davis, prepared a letter to Cummings that was never sent which claimed that Cummings had agreed in "writing" that he was only purchasing the west side. The reason for not sending this letter is clear because of an e-mail from Mr. Davis to Ms. Thornock wherein he indicated that he needed a "signed" version of "Addendum # 3" to the purchase agreement, which indeed does not exist. Of further note, the e-mail is an admission that the purchase contract contained no exclusions of property on the east side. (*Olsen Aff.* Exh. 2)
10. When Cummings filed a claim against Stephens to enforce the original Warranty Deed, again without notice or authorization from Cummings, and notwithstanding its fiduciary role as both escrow agent and title insurer, Northern Title agreed to indemnify Stephens. Northern Title's attorney, Brad Bearnson, filed an appearance in the case under the guise of being "local counsel" for Stephens, when in fact he was there primarily for Northern Title. (See generally the pleadings in this case.)
11. After the lawsuit was filed and many years after the transaction had closed, Thornock filed an affidavit in support of Stephens, wherein she claims that realtor, Dorothy Julian, had called her to inform her that the sale only included the west side. Nowhere in the records that she kept at the time of the transaction, including the log notes and her file, is there any documentation of this alleged conversation. In fact, all of the contemporaneous records suggest that Thornock's brother-in-law, Evan Skinner, was the primary agent involved in the transaction, i.e. that he was both the "listing" and "sellers" agent. Thornock's relationship with Mr. Skinner was never disclosed to Cummings. (See pleadings and *Cummings' Mot. For Part. Sum. Judg.*)
12. Thornock has admitted that she deleted e-mails related to the transaction *after* Northern Title became aware that there was a dispute. This constitutes spoliation of evidence. (See *Olsen Aff.* Exh. 3, *Thornock Dep.* 133-135)
13. Northern Title has deceptively attempted to promote "maps" to suggest that the sale was only going to include the west side, without providing any foundation that the maps were ever reviewed or approved by Cummings. Even then, the "maps" do not contain a border showing the boundaries of the property, and can easily be construed to suggest that the sale did indeed include both sides. (See *Cummings Mot. for Part. Summ. Judg.*)
14. Northern Title's bad faith has been perpetuated by its conduct in the litigation, including causing inordinate delays, purposefully withholding requested information, breaching agreements with counsel with regard to depositions and other discovery matters, making extremely late and insufficient disclosures,

bombarding the court and plaintiff with borderline frivolous motions submitted with hundreds of documents, and outright misrepresenting facts in the case. (See the pleadings, in particular during the months of June and July, 2012.)

In addition to the above, Cummings has obtained the testimony of an expert with more than 30 years experience in the title and escrow industry, Lenore Katri. When questioned about whether Northern Title's conduct constituted an "extreme deviation" from the industry standards, Ms. Katri agreed, with the following pertinent testimony:

Q: Would you consider the conduct of Northern Title in this case to be an extreme deviation from the normal standards of a title and escrow agency?

A: Yes

Q: Why is that?

A: Because they didn't get written instructions for any changes to the original contract.

Q: And is there any other conduct, too, by Northern Title that you can think of at this time that would be considered extreme deviation?

A: It appears that they didn't respond to the purchaser to try and work out a solution to the problem.

Q: And that's a good point. I'm glad you brought that up because there is some discussion in your testimony today about the importance of neutrality and avoiding conflicts of interest. Is it appropriate when a claim comes in with regard to the transaction that you've closed that you've acted as a neutral party to take one side of the issue?

A: No.

Q: Do you think it's even appropriate to indemnify the side that's not your insured?

A: No

Lenore Katri June 15, 2012, Dep. 161:20-25, 162: 1-20. (Provided as Olsen Aff. Ex. 4)

One way of amplifying the outrageous conduct of Northern Title in this matter is to consider the following: First, Northern Title made no effort whatsoever in the beginning to ascertain or confirm that its customer and fiduciary's intent was with regard to the east side

7 | Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages

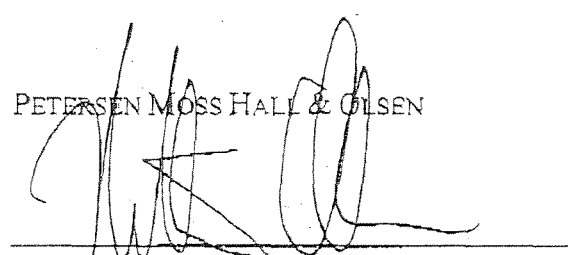
acreage. This is egregious in itself. Second, Northern Title has not acted with any sense of neutrality whatsoever and has actively and aggressively defended one of the parties, the seller, Mr. Stephens, at massive expense to the buyer, Mr. Cummings. The combination of these two factors, i.e. that it has never sought or known the intent of Cummings and has instead actively defended and promoted Stephens' interest, is what makes Northern Title's conduct particularly aggravating. In essence, Northern Title has not demonstrated one shred of its obligation and duty toward ensuring that the purchaser's (Cummings) intent is both known and followed, while at the same time taking extreme and inappropriate measures to support the seller (Stephens). This clearly fits within the "outrageous" or "willful and deliberate" conduct of a fiduciary suggesting a "bad state of mind" and warrants at least an instruction for punitive damages.

CONCLUSION

Pursuant to the foregoing, Cummings' Motion for Leave to Amend Complaint to add a claim for punitive damages should be granted. There is at least a reasonable likelihood that given the evidence now before the Court and to be presented at trial a jury will find that Northern Title's conduct warrants punitive damages.

DATED this 3 day of July, 2012.

PETERSEN MOSS HALL & OLSEN


Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 3 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

Method of Service:

() mail () hand ☒ fax () email

Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

() mail () hand ☒ fax () email

Attorneys for Northern Tille Company

~~Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com~~

~~() mail () hand ☒ fax () email~~

~~*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*~~

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand ☒ fax
courtesy chamber's copy


Nathan M. Olsen

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL -3 PM 2:57

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

NOTICE OF HEARING

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

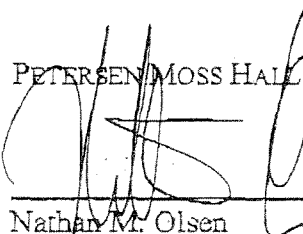
DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in
Georgetown, Idaho, EXIT REALTY OF
BEAR LAKE, LLC, an Idaho Limited

1 | Notice of Hearing

Liability Company, JOHN DOES I-X,
Third Party Defendants.

Please take notice that plaintiff, Steven B. Cummings, will call his Motion for Leave to Amend Complaint to Allege Punitive Damages on for hearing on the 17th day of July, 2012, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, before the Honorable David C. Nye, at the Bear Lake County Courthouse, Paris, Idaho. You are invited to attend and to participate.

DATED this 3 day of July, 2012.

PETERSEN MOSS HALL & OLSEN

Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 3 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rob@racinelaw.net

Method of Service:

() mail () hand ☒ fax () email

Attorneys for Roger L. Stephens

Persons Served:

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

~~Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com~~

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

Method of Service:

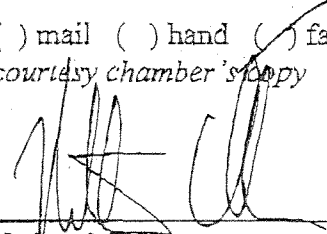
() mail () hand ☒ fax () email

Attorneys for Northern Title Company

~~() mail () hand ☒ fax () email~~

~~*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*~~

() mail () hand ☒ fax () email
courtesy chamber's copy



Nathan M. Olsen

Randall C. Budge (ISB No. 1949)
Jason E. Flaig (ISB No. 7942)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net
jef@racinelaw.net

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL -5 AM 11:21

KIRBY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Roger L. Stephens Defendant/Third Party Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

Defendants.)

Case No. CV-2009-183

**STEPHENS' AMENDED ANSWER TO
CUMMINGS' SECOND AMENDED
COMPLAINT**

COMES NOW Defendant ROGER L. STEPHENS (hereinafter "Defendant"), through
counsel, and in answer to Plaintiff's Second Amended Complaint (hereafter "Plaintiff's
Complaint") alleges and states as follows:

PARTIES

1. Defendant admits the allegations contained in paragraph 1 of Plaintiff's
Complaint.

2. Defendant admits the allegations contained in paragraph 2 of Plaintiff's Complaint.

3. Defendant admits the allegations contained in paragraph 3 of Plaintiff's Complaint.

JURISDICTION AND VENUE

4. Defendant admits the allegations contained in paragraph 4 of Plaintiff's Complaint.

5. Defendant admits the allegations contained in paragraph 5 of Plaintiff's Complaint.

GENERAL ALLEGATIONS

6. Defendant is without sufficient information to admit or deny the allegations of paragraph 6 of Plaintiff's Complaint, and therefore denies the same.

7. Defendant is without sufficient information to admit or deny the allegations of paragraph 7 of Plaintiff's Complaint, and therefore denies the same.

8. Defendant is without sufficient information to admit or deny the allegations of paragraph 8 of Plaintiff's Complaint, and therefore denies the same.

9. Defendant is without sufficient information to admit or deny the allegations of paragraph 9 of Plaintiff's Complaint, and therefore denies the same.

10. Defendant is without sufficient information to admit or deny the allegations of paragraph 10 of Plaintiff's Complaint, and therefore denies the same.

11. Defendant is without sufficient information to admit or deny the allegations of paragraph 11 of Plaintiff's Complaint, and therefore denies the same.

12. Defendant is without sufficient information to admit or deny the allegations of

paragraph 12 of Plaintiff's Complaint, and therefore denies the same.

13. As to paragraph 13 of Plaintiff's Complaint, Defendant admits that Northern Title prepared a PSA and title commitment, Order # NTBL-1183. Defendant is without sufficient information to admit or deny any remaining allegations, and therefore denies the same.

14. Defendant denies the allegations contained within paragraph 14 of Plaintiff's Complaint.

15. Defendant denies paragraph 15 insofar as such alleges Plaintiff complied with his due diligence requirements, and insofar as such alleges the title commitment prepared by Northern Title did not contain any exception language. As for any remaining allegations Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

16. Defendant is without sufficient information to admit or deny the allegations of paragraph 16 of Plaintiff's Complaint, and therefore denies the same.

17. Defendant denies paragraph 17 insofar as such alleges Plaintiff complied with his due diligence requirements; Defendant admits that Plaintiff executed the assignment to purchase Three Bar Ranches interest for \$50,000.00; as for any remaining allegations, Defendant is without sufficient information to admit or deny the allegations of paragraph 17 of Plaintiff's Complaint, and therefore denies the same.

18. Defendant is without sufficient information to admit or deny the allegations of paragraph 18 of Plaintiff's Complaint, and therefore denies the same.

19. Defendant denies paragraph 19 of Plaintiff's Complaint, insofar as such alleges Defendant Northern Title was retained to represent solely Plaintiff in the closing of the property. As to any further allegations, Defendant is without sufficient information to admit or deny the

truth thereof, and therefore denies the same.

20. Defendant denies the allegations of paragraph 20 of Plaintiff's Complaint.

21. Defendant is without sufficient information to admit or deny the allegations of paragraph 21 of Plaintiff's Complaint, and therefore denies the same.

22. Defendant is without sufficient information to admit or deny the allegations of paragraph 22 of Plaintiff's Complaint, and therefore denies the same.

23. Defendant admits the allegations contained within paragraph 23 of Plaintiff's Complaint.

24. Defendant is without sufficient information to admit or deny the allegations of paragraph 24 of Plaintiff's Complaint, and therefore denies the same.

25. Defendant is without sufficient information to admit or deny the allegations of paragraph 25 of Plaintiff's Complaint, and therefore denies the same.

26. Defendant is without sufficient information to admit or deny the allegations of paragraph 26 of Plaintiff's Complaint, and therefore denies the same.

27. As to the allegations of paragraph 27 of Plaintiff's Complaint, Defendant admits that the August 3, 2007 recorded deed did contain the statement, after paragraph A., "THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY." As to any further allegations in paragraph 27 of Plaintiff's Complaint, Defendant is without sufficient information to admit or deny the allegations, and therefore denies the same.

28. Defendant is without sufficient information to admit or deny the allegations of paragraph 28 of Plaintiff's Complaint, and therefore denies the same.

29. As to the allegations of paragraph 29, Defendant admits that a scrivener's error in

the Warranty Deed as detected by an individual in the County Assessor's Office was corrected by Defendant Northern Title, which had no effect upon the property sold by Stephens to Plaintiff, consisting of approximately 270 acres located west of U.S. Highway 30. Defendant lacks sufficient information to admit or deny any remaining allegations of paragraph 29, and therefore denies the same.

30. Defendant denies the allegations contained within paragraph 30 of Plaintiff's Complaint.

31. Defendant is without sufficient information to admit or deny the allegations of paragraph 31 of Plaintiff's Complaint, and therefore denies the same.

32. Defendant is without sufficient information to admit or deny the allegations of paragraph 32 of Plaintiff's Complaint, and therefore denies the same.

33. As to paragraph 33 of Plaintiff's Complaint, Defendant affirmatively states any log note maintained by Defendant Northern Title speaks for itself. Defendant is without sufficient information to admit or deny the allegations of paragraph 33 of Plaintiff's Complaint, and therefore denies the same.

34. Defendant is without sufficient information to admit or deny the allegations of paragraph 34 of Plaintiff's Complaint, and therefore denies the same.

35. Defendant is without sufficient information to admit or deny the allegations of paragraph 35 of Plaintiff's Complaint, and therefore denies the same.

36. Defendant is without sufficient information to admit or deny the allegations of paragraph 36 of Plaintiff's Complaint, and therefore denies the same.

37. As to paragraph 37 of Plaintiff's Complaint, Defendant denies such allegations insofar as they suggest Defendant or Defendant Northern Title supplied Plaintiff with a false or

fabricated after the fact legal description of the property. Defendant lacks sufficient information to admit or deny any further allegations contained in paragraph 37 of Plaintiff's Complaint, and therefore denies the same.

38. As to the allegations contained in paragraph 38, Defendant states that the Complaint filed with the Court speaks for itself. Defendant admits the Complaint was filed on or about July 29, 2009 with the Idaho 6th Judicial District, Bear Lake County (CV-09-183), and listed "JOHN DOES I-X." Defendant lacks sufficient information to admit or deny any further allegations contained in paragraph 38 of Plaintiff's Complaint, and therefore denies the same.

39. Defendant admits the allegations contained in paragraph 39 of the Plaintiff's Complaint.

40. Defendant admits the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. As to the allegations contained in paragraph 41, exclusive of subparts (a) through (p), Defendant admits that Plaintiff filed a motion for summary judgment, and that discovery was exchanged between the parties. Defendant lacks sufficient information to admit or deny any further allegations contained in paragraph 41 of Plaintiff's Complaint, and therefore denies the same.

42. Defendant denies the allegations contained in paragraph 41(a) of Plaintiff's Complaint.

43. Defendant is without sufficient information to admit or deny the allegations of paragraph 41(b) of Plaintiff's Complaint, and therefore denies the same.

44. Defendant denies the allegations contained in paragraph 41(c) of Plaintiff's Complaint.

45. Defendant denies the allegations contained in paragraph 41(d) of Plaintiff's Complaint.

46. As to the allegations of paragraph 41(e) of Plaintiff's Complaint, Defendant admits that Defendant Northern Title recorded a corrected deed after a scrivener's error was detected by an individual in the County Assessor's Office, which had no effect upon the property sold by Stephens to Plaintiff, consisting of approximately 270 acres located west of U.S. Highway 30. Defendant denies any remaining allegations contained within paragraph 41(e) of Plaintiff's Complaint.

47. Defendant is without sufficient information to admit or deny the allegations of paragraph 41(f) of Plaintiff's Complaint, and therefore denies the same.

48. Defendant denies the allegations contained within paragraph 41(g) of Plaintiff's Complaint.

49. As to paragraph 41(h) of Plaintiff's Complaint, Defendant states that any written email speaks for itself. Defendant denies any remaining allegations contained within paragraph 41(h) of Plaintiff's Complaint.

50. As to paragraph 41(i) of Plaintiff's Complaint, Defendant admits that Defendant Northern Title has agreed to indemnify Defendant Stephens. Defendant denies any further allegations contained in paragraph 41(i) of Plaintiff's Complaint.

51. As to paragraph 41(j) of Plaintiff's Complaint, Defendant admits that Defendant Northern Title has agreed to indemnify Defendant Stephens. Defendant denies any further allegations contained in paragraph 41(j) of Plaintiff's Complaint.

52. As to paragraph 41(k) of Plaintiff's Complaint, Defendant admits that Brad Bearnson entered as co-counsel for Defendant Stephens, and that he is also Defendant Northern

Title's attorney. Defendant denies any further allegations contained in paragraph 41(k) of Plaintiff's Complaint.

53. Defendant denies the allegations contained in paragraph 41(l) of Plaintiff's Complaint.

54. Defendant is without sufficient information to admit or deny the allegations of paragraph 41(m) of Plaintiff's Complaint, and therefore denies the same.

55. As to paragraph 41(n) of Plaintiff's Complaint, Defendant admits that his counsel assisted in answering the subpoena request made upon Defendant Northern Title. As to any further allegations remaining, Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

56. Defendant is without sufficient information to admit or deny the allegations of paragraph 41(o) of Plaintiff's Complaint, and therefore denies the same.

57. Defendant denies the allegations contained in paragraph 41(p) of Plaintiff's Complaint.

58. Defendant denies the allegations contained within paragraph 42 of Plaintiff's Complaint.

59. Defendant is without sufficient information to admit or deny the allegations of paragraph 43 of Plaintiff's Complaint, and therefore denies the same.

60. Defendant denies the allegations contained in paragraph 44 of Plaintiff's Complaint.

61. Defendant denies the allegations contained in paragraph 45 of Plaintiff's Complaint.

COUNT I – Breach of Warranty (Stephens – Northern Title)

62. Answering the allegations of paragraph 46, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

63. Defendant admits paragraph 47 of Plaintiff's Complaint.

64. Defendant admits paragraph 48 of Plaintiff's Complaint, insofar as Stephens provided warranties of title, but denies all other allegations of paragraph 48.

65. As to paragraph 49 of Plaintiff's Complaint, Defendant affirmatively states that the Warranty Deed speaks for itself. As to any remaining allegations, Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

66. Defendant denies those allegations contained in paragraph 50 of Plaintiff's Complaint.

67. As to paragraph 51 of Plaintiff's Complaint, Defendant admits that it has entered into an indemnity agreement with Defendant Northern Title, affirmatively states that such agreement speaks for itself, and denies all other allegations contained in paragraph 51.

68. Defendant denies those allegations contained in paragraph 52 of Plaintiff's Complaint.

COUNT II – Conversion (Stephens – Northern Title)

69. Answering the allegations of paragraph 53, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

70. Defendant denies those allegations contained in paragraph 54 of Plaintiff's Complaint.

71. Defendant denies those allegations contained in paragraph 55 of Plaintiff's Complaint.

72. Defendant denies those allegations contained in paragraph 56 of Plaintiff's Complaint.

73. As to paragraph 57 of Plaintiff's Complaint, Defendant admits that it has entered into an indemnity agreement with Defendant Northern Title, affirmatively states that such agreement speaks for itself, and denies all other allegations contained in paragraph 57.

74. Defendant denies those allegations contained in paragraph 58 of Plaintiff's Complaint.

COUNT III – Slander of Title (Stephens – Northern Title)

75. Answering the allegations of paragraph 59, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

76. Defendant denies those allegations contained in paragraph 60 of Plaintiff's Complaint.

77. Defendant denies those allegations contained in paragraph 61 of Plaintiff's Complaint.

78. As to paragraph 62 of Plaintiff's Complaint, Defendant admits that it has entered into an indemnity agreement with Defendant Northern Title, affirmatively states that such agreement speaks for itself, and denies all other allegations contained in paragraph 62.

79. Plaintiff denies the allegations contained in paragraph 63 of the Plaintiff's Complaint.

COUNT IV- Breach of Contract (Northern Title)

80. Answering the allegations of paragraph 64, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

81. Defendant denies paragraph 65 of Plaintiff's Complaint, insofar as such alleges

Defendant was retained to represent solely Plaintiff in the closing of the property or in escrow arrangements. Defendant affirmatively states that the aforementioned escrow agreement speaks for itself. Furthermore, any specific escrow agreement being referenced by Plaintiff's Complaint was not included in Exhibit "E" as alleged, and therefore Defendant is without sufficient information to admit or deny any remaining allegations of paragraph 65, and therefore denies the same.

82. Defendant denies the allegations contained within paragraph 66, and its subparts (a) through (f), of Plaintiff's Complaint.

83. Defendant denies the allegations contained within paragraph 67 of Plaintiff's Complaint.

COUNT V – Per Se Violations of Idaho Escrow Act (Northern Title)

84. Answering the allegations of paragraph 68, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

85. As to paragraph 69 of Plaintiff's Complaint, with its accompanying subparts (a) through (h), and paragraph 70, with its accompanying subparts (a) through (d), Defendant affirmatively states that the Idaho Code as enacted speaks for itself. As to any allegations contained within these paragraphs, such are directed to Defendant Northern Title, and not Defendant Stephens, and therefore Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

87. As to any allegations contained within paragraph 71 of Plaintiff's Complaint, such are directed to Defendant Northern Title, and not Defendant Stephens, and therefore Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

88. Defendant denies the allegations contained within paragraph 72 of Defendants First Amended Complaint.

COUNT VII [sic] – Breach of Duty of Good Faith and Fair Dealing (Northern Title)

89. Answering the allegations of paragraph 73, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

90. As to any allegations contained within paragraph 73, 74, 75, 76, 77, 78, 79 and 80, of Plaintiff's Complaint, such are directed to Defendant Northern Title, and not Defendant Stephens, and therefore Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

91. Defendant denies the allegations contained within paragraph 81 of Plaintiff's Complaint.

COUNT VIII [sic] – Negligence or Gross Negligence (Northern Title)

92. Answering the allegations of paragraph 82, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

93. As to any allegations contained within paragraph 83, 84 and 85 of Plaintiff's Complaint, such are directed to Defendant Northern Title, and not Defendant Stephens, and therefore Defendant is without sufficient information to admit or deny the truth thereof, and therefore denies the same.

94. Defendant denies the allegations contained within paragraph 86 of Plaintiff's Complaint.

COUNT IX [sic] – Breach of Insurance Policy Agreement

95. Answering the allegations of paragraph 87, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

96. As to paragraph 88 of Plaintiff's Complaint, Defendant admits that Defendant Northern Title issued a title commitment policy to Plaintiff on or about April 8, 2008. Defendant affirmatively states that the aforementioned agreement speaks for itself, and that as to any remaining allegations within paragraph 88, Defendant lacks sufficient information to admit or deny the truth thereof, and therefore denies the same.

97. As to paragraph 89 of Plaintiff's Complaint, Defendant admits that the title commitment policy issued to Plaintiff contains a "Defense and Prosecution of Actions Provision," but affirmatively states that the specific provision, and the agreement of which it is a part, speaks for itself. As to any remaining allegations within paragraph 89, Defendant lacks sufficient information to admit or deny the truth thereof, and therefore denies the same.

98. Defendant denies the allegations contained within paragraph 90 of Plaintiff's Complaint.

99. Defendant denies the allegations contained within paragraph 91 of Plaintiff's Complaint.

100. Defendant denies the allegations contained within paragraph 92 of Plaintiff's Complaint.

101. Defendant is without sufficient information to admit or deny the allegations of paragraph 93 of Plaintiff's Complaint, and therefore denies the same.

102. Defendant denies the allegations contained within paragraph 94 of Plaintiff's Complaint.

103. Defendant denies the allegations contained within paragraph 95 of Plaintiff's Complaint.

COUNT IX [sic] – Infliction of Emotional Distress (Northern Title & Stephens)

104. Answering the allegations of paragraph 96, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

105. Defendant denies the allegations contained within paragraph 97 of Plaintiff's Complaint.

106. Defendant denies the allegations contained within paragraph 98 of Plaintiff's Complaint.

107. Defendant denies the allegations contained within paragraph 99 of Plaintiff's Complaint.

108. Defendant denies the allegations contained within paragraph 100 of Plaintiff's Complaint.

109. Defendant denies the allegations contained within paragraph 101 of Plaintiff's Complaint.

POTENTIAL FOR ADDITIONAL CLAIMS

110. Defendant denies the allegations contained within paragraph 102 of Plaintiff's Complaint.

PUNITIVE DAMAGES

111. Defendant denies the allegations contained within paragraph 103 of Plaintiff's Complaint.

ATTORNEY FEES

112. Answering the allegations of paragraph 104, Defendant realleges and incorporates herein by this reference its answer to the preceding paragraphs of Plaintiff's Complaint.

113. Defendant denies the allegations contained within paragraph 105 of Plaintiff's

Complaint.

114. Defendant denies the allegations contained within paragraph 106 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's alleged claims fail to state a claim upon which relief can be granted against Defendant.

2. Plaintiff's alleged claims are barred by the doctrines of accord and satisfaction, novation, set-off, payment, release, consent, waiver, estoppel, and/or laches.

3. Plaintiff's alleged claims are barred by the doctrines of unclean hands and/or in pari delecto.

4. Plaintiff's alleged claims are barred by its own material breach and/or wrongful conduct regarding any contract, agreements, express or implied.

5. Plaintiff's alleged claims are barred under the specific terms and/or disclaimers of any warranty, contracts, and/or other agreements between Plaintiff and Defendant.

6. Plaintiff's alleged claims barred wherein Defendant's actions and/or omissions were conducted in good faith.

7. Plaintiff's alleged claims are barred due to Plaintiff's own bad-faith actions and/or omissions.

8. Plaintiff's alleged claims are barred due to failure to mitigate.

9. Plaintiff's alleged claims are barred in whole or in part under the doctrines

of comparative and/or contributory negligence.

10. Plaintiff's alleged claims are barred for lack of any breach of warranties, contracts, and/or any other duties or obligations imposed by law.

11. Plaintiff's alleged claims are barred for lack of privity.

12. Plaintiff's alleged claims are barred by breaches of implied covenants of good faith and fair dealing; thereby relieve Defendant of any responsibility, obligation, and/or liability.

13. Plaintiff's alleged claims are barred by the applicable statute of limitations.

14. Plaintiff's alleged claims are barred where Defendant has expressly, impliedly, or by the operation of law, been excused from any and all obligations relating to Plaintiff's Complaint and/or any breach of any alleged agreement therein.

15. Plaintiff's alleged claims are barred in whole or in part by the doctrines of impossibility, impracticability and/or frustration of purpose.

16. Plaintiff's alleged claims are barred by the doctrines of mutual mistake and/or unilateral mistake.

17. Plaintiff's alleged claims are barred by lack of and/or failure of consideration.

18. Plaintiff's alleged claims are barred by Plaintiff's own fraud and/or fraud in the inducement.

19. Plaintiff's alleged claims are barred by lack of notice.

20. Plaintiff's alleged claims are barred by failure to join an indispensable

party.

21. Plaintiff's alleged claims are barred under the statute of frauds.

22. Plaintiff's alleged claims are barred under the Idaho Real Estate Brokerage Representation Act, where Plaintiff did not have actual knowledge of, and reasonably could not have known of the wrongful acts, errors, omissions or misrepresentations by Ms. Julian, Mr. Skinner, Mr. Olsen, and/or Exit Realty of Bear Lake, LLC.

23. Defendant reserves the right to raise additional affirmative defenses that may be appropriate as investigation, discovery, and analysis of this case proceed. Defendant reserves all rights to raise all offsets and affirmative claims it has or may have as against Plaintiff, including, without limitation, for attorney fees and costs incurred in connection with this case.


REQUEST FOR ATTORNEY FEES

Plaintiff's Complaint is without basis in law or fact, and Defendant is entitled to an award of reasonable attorney fees and costs incurred pursuant to agreements between the parties. Attorney fees are also appropriate under Idaho Code § 12-120(3) and/or §12-121.

WHEREFORE, Defendant respectfully asks this Court to dismiss Plaintiff's claims with prejudice and to deny Plaintiff's relief thereby, for attorney's fees, costs and expenses, and for such further and other relief as the Court deems just under the circumstances.

DATED this 3rd day of July, 2012.

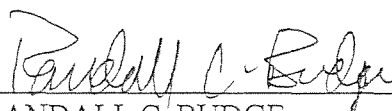
RACINE, OLSON, NYE, BUDGE & BAILEY,
CHARTERED

By: 
RANDALL C. BUDGE
Attorneys for Defendant Roger L. Stephens

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of July, 2012, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Nathan M. Olsen	<input type="checkbox"/> U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	<input type="checkbox"/> Hand Delivery
485 "E" Street	<input type="checkbox"/> Overnight Mail
Idaho Falls, Idaho 83402	<input type="checkbox"/> Facsimile (208-524-3391)
	<input checked="" type="checkbox"/> Email (Nathan@pmholaw.com)
Brad Bearnson	<input type="checkbox"/> U.S. Mail/Postage Prepaid
Bearnson & Caldwell	<input type="checkbox"/> Hand Delivery
399 N. Main St, Ste 270	<input type="checkbox"/> Overnight Mail
Logan, Utah 84321	<input type="checkbox"/> Facsimile (435-752-6301)
	<input checked="" type="checkbox"/> Email (bbearnson@bearnsonlaw.com)
Honorable David C. Nye	<input type="checkbox"/> U. S. Mail/Postage Prepaid
Bannock County Courthouse	<input type="checkbox"/> Hand Delivery
624 E. Center, Rm 220	<input type="checkbox"/> Overnight Mail
Pocatello, Idaho 83205	<input type="checkbox"/> Facsimile (208-344-5510)
(Courtesy Copy)	<input checked="" type="checkbox"/> Email (davidn@bannockcounty.us)


RANDALL C. BUDGE

expert witnesses and Defendants had until 105 days before trial to disclose their experts. Plaintiff then had until 70 days before trial to disclose any rebuttal experts. Disclosure had to be in the manner and specificity required by IRCP 26(b)(4)(A)(i). Pursuant to the rules and deadlines, Defendants had until April 17, 2012, to fully and completely disclose their experts.³ Finally, the Order Setting Jury Trial states "Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice." This expert witness disclosure requirement under IRCP 16 is separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37.

Northern Title first disclosed Craig Warren as an expert on March 12, 2012 in its Amended Witness Disclosure. At that time, Northern Title simply stated:

Defendant intends to call Craig Warren as an expert Certified General Appraiser, 2072 North Main, Suite 201, North Logan, Utah, 84341; expected to testify concerning the appraisal value of the property at issue in this case.⁴

That disclosure occurred prior to Northern Title's expert disclosure deadline of April 17, 2012, but does not even begin to comply with the requirements set forth in the Court's Order or in IRCP 26(b)(4)(A)(i). Northern Title provided Warren's expert report to Cummings during depositions on June 14, 2012, almost two months after the disclosure deadline and about six weeks prior to trial.

A trial court has authority to sanction parties for non-compliance with pretrial orders, and sanctions may include those enumerated in I.R.C.P. 37(b)(2)(B), (C) and (D) for discovery violations.⁵ The imposition of such sanctions is committed to the discretion of the trial court.⁶

³ Although the defendants' disclosure deadline was only three months after the January 27, 2012 Order Setting Trial, which imposed that deadline, Northern Title's attorney Brad Bearnson, has been involved in this case since the outset. Originally, he represented Defendant Stephens. As counsel of record, he received at least two prior Orders setting disclosure deadlines and knew the issues in this case.

⁴ See, Defendant Northern Title's Response Memorandum to Plaintiff's Motion for Sanctions and Motion to Exclude Defendant's Expert, Exhibit "D", pg. 5.

⁵ I.R.C.P. 16(i).

Here, the parties have known from the outset that the value of the property would be relevant on the issue of damages if Plaintiff convinces the factfinder that he bought the property east of the highway. Northern Title has known since at least March 13, 2012, that Cummings intended to call an appraiser as an expert witness.⁷ Nevertheless, Northern Title did not timely disclose an expert opinion regarding the value of the property.

There are reasons a Court imposes a scheduling Order especially in complex cases such as this one. The primary reason is to prevent surprises and trial by ambush. The Court is not inclined to turn a blind eye to the lateness of Northern Title's disclosure. Therefore, the expert will not be allowed to testify at trial and his opinion cannot go to the factfinder unless the interest of justice so require.

Northern Title argues that it did not disclose the appraiser's report until June 14, 2012 because the report was not a final report. In making this argument, Northern Title acknowledges that it had the report since sometime in February, 2012, but that its counsel believed the report was merely a preliminary report and not a final report. According to Northern Title, the fact that it was a preliminary report meant that it did not have to be disclosed. However, Northern Title also acknowledges that the disclosed report is the same report it had since February and that any future changes in the report would not change the expert's opinion but only provide additional facts to buttress his opinion. Finally, Northern Title asks that it be allowed to disclose Craig Warren even though the disclosure deadline has passed.

Looking at the totality of circumstances, this Court cannot say that the interests of justice require the Court to allow this untimely disclosed opinion to be admissible at trial. Northern Title

⁶ *Edmunds v Kraner*, 142 Idaho 867, 136 P.3d 338 (2006).

⁷ Northern Title did not know until long after the disclosure deadline what value Cumming's appraiser put on the property east of the highway, but that is
MEMORANDUM DECISION


had the expert's opinion several months before the disclosure deadline but failed to timely disclose it. The opinion, regarding the value of the property east of the highway, has not changed and is not anticipated to change before trial. It should have been disclosed by April 17, 2011. If the basis for the expert opinion changed after that time, Northern Title could then supplement the opinion. Additionally, Northern Title did not seek permission from the Court for a late disclosure until after the deadline had passed. Therefore, Craig Warren will not be allowed to testify at trial, and his opinion regarding the value of the property cannot be used at trial.

Cummings also seeks attorney fees regarding this motion as a sanction. That request is denied. The sanction is the preclusion of the expert's testimony. The time spent by Cummings' counsel getting the opinion disallowed can be dealt with at the conclusion of trial when the Court addresses the issue of prevailing party and the issue of an award of attorney fees. No attorney fees will be awarded on this motion at this juncture.

Therefore, Cummings' Motion to Exclude Northern Title's expert is granted. Northern Title's motion to make a late disclosure is denied.

SO ORDERED.

DATED this 5th day of July, 2012.



DAVID C. NYE
Sixth District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 9th day of July, 2012, I mailed/served a true copy of the foregoing document on the attorney(s) / person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

ATTORNEY(S) / PERSON(S)

Nathan M. Olsen
BEARD ST. CLAIR GAFFNEY, PA
2105 Coronado Street
Idaho Falls, ID 83404

~~U.S. Mail~~ facsimile 524-3391

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

~~U.S. Mail~~ facsimile 232-6109

Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

~~U.S. Mail~~ facsimile 435-752-6301

KERRY HADDOCK,
Clerk of the Court

By *K. Haddock*
Deputy Clerk